TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 9.—ORIGINAL.

THE UNITED STATES

vs.

THE HONORABLE OGDEN HOFFMAN, DISTRICT JUDGE OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

MOTION FOR A PROHIBITION IN THE MATTER OF THOMAS J. REDDISH, SPECIAL ADMINISTRATOR OF WILLIAM GRIFFIN, DECEASED, LIBELLANT, vs. THE STEAMSHIP PACIFIC.

FILED NOVEMBER 16, 1866.

1

To the honorable the Supreme Court of the United States:

The suggestion of the California Steam Navigation Company against the district court of the United States for the northern district of California, and against Thomas J. Reddish, special administrator of the estate of William Griffin, deceased, libellant in a certain suit in admiralty now pending in said court, and more particularly hereinafter referred to.

The said California Steam Navigation Company respectfully alleges that it is, and at all the times hereinafter mentioned was, a corporation incorporated under the laws of the State of California.

That on the 15th day of July, in the year 1865, the said Thomas J. Reddish, special administrator as aforesaid, filed in the office of the clerk of the district court of the United States for the northern
2 district of California, a certain libel or paper purporting to be a libel in admiralty against the steamship Pacific, which steamship is and then was the property of the said California Steam Navigation Company, of which said paper a certified copy is hereunto annexed, marked A. That upon the filing of said paper, process of monition and attachment was issued against said steamship, and under color of the authority of said process the said steamship was seized and attached by the marshal of the United States for said district, to whom said process was directed. That on the same day the said California Steam Navigation Company filed a claim to said vessel, of which a certified copy is hereunto annexed, marked B, and tendered to said marshal a stipulation for the release of said vessel pursuant to
3 the act of Congress in such case made and provided, and to the practice of said court, which said stipulation was accepted by the said marshal, and the said steamship was thereupon released from custody. That on the 27th day of July, 1865, the said company filed its exceptions to said libel, of which exceptions a certified copy is hereunto annexed, marked C, and the same were duly brought to a hearing, and argument had thereon by the respective counsel for the libellant and the claimant. That after hearing said argument the said court, after due deliberation, delivered an opinion or decision in writing overruling said exceptions and sustaining the jurisdiction of said court in the premises, of which a copy is hereunto annexed, marked D. That in accordance with said decision an order was accordingly entered overrulling said exceptions, of which order a copy is
4 hereunto annexed, marked C. That the said California Steam Navigation Company thereupon filed its answer to the said libel in admiralty, denying sundry allegations therein, and denying the jurisdiction of said court over the matters set forth therein. That the said court continues to assert its jurisdiction in the premises, and is proceeding towards the final hearing and disposition of the case, and to a final decree therein on the issues presented by the libel and answer aforesaid.

And the said California Steam Navigation Company says that four other suits in admiralty, founded on libels of the same character as the said libel, are pending in said court against steamships owned and

claimed by said company, and that in addition to these suits decrees have lately been entered in said court in four other suits in
5 admiralty against the steamship Brother Jonathan, owned and claimed by said company, said four last mentioned suits being of the same character and presenting the same jurisdictional questions presented on the pleadings in the said suit of Thomas J. Reddish, special administrator, &c., against the said steamship Pacific; and that each and all of said suits, are for the recovery of half pilotage fees claimed to be due under the statutes of the State of California, and being founded on the alleged rejection of the proffered services of the libellants as pilots of the port of San Francisco; that the sums claimed in said suits, including those in which decrees have been entered as aforesaid, amount in the aggregate to several thousand dollars, but that no separate claim of any of the libellants in said suits is of sufficient amount to admit of a final appeal in
6 any decree therein to this honorable court, the largest sum claimed in any of said libels being under one thousand dollars.

And the said California Steam Navigation Company is advised and believes that the said district court has no jurisdiction over the matters stated and set forth in the libel of the said Thomas J. Reddish, special administrator as aforesaid, against the said steamship Pacific; that the cause of action therein stated is simply a case of debt on statute, and that the libellants' alleged right of recovery is asserted, not on the ground that he rendered or was employed to render a maritime service, but that the master of the steamship Pacific refused to engage or employ him to render any such service, and that he therefore rendered no such service.

Wherefore the said California Steam Navigation Company respectfully requests that a writ of prohibition may be issued out of
7 this honorable court to the judge of the district court of the United States for the northern district of California, prohibiting him, either until the further order of this court, or prohibiting him absolutely, from entertaining any further jurisdiction in and over the suit of the said Thomas J. Reddish, special administrator as aforesaid, against the said steamship Pacific, and from making any order, issuing any process, or taking any further proceeding therein, and also in like manner prohibiting the said Thomas J. Reddish, special administrator, &c., from proceeding any further in said suit, or applying for any order or process therein, and that this honorable court will be pleased to grant such other or further relief, or both, in the premises, as may be needful and appropriate.

The California Steam Navigation Company—

B. M. HARTSHORNE, *Vice President.*

8 NORTHERN DISTRICT OF CALIFORNIA, *ss:*

B. M. Hartshorne, of said district, being duly sworn, says that he is the vice president of the California Steam Navigation , by which company the aforesaid suggestion is made, and which said company

mentioned and referred to therein. That he has read the foregoing suggestion and knows the contents thereof, and that the same is true.

B. M. HARTSHORNE.

[5 ct. gov. stamp.]

Subscribed and sworn to before me, this 10th day of January, 1866.

[SEAL.] DAN'L F. SULLIVAN,
U. S. Comm'r.

9 A.—*Libel.*

To the judge of the district court of the United States for the northern district of California, in admiralty:

Thomas J. Reddish, of the city and county of San Francisco and State of California, special administrator of the estate of William Griffin, deceased, late of said city, duly appointed and qualified by the probate court of the said county as such special administrator, and the said Thomas J. Reddish, the libellant herein, brings into court here the letters of special administration, whereby it appears to said court here that the said libellant is special administrator of the said William Griffin, dec'd, and as such has the execution thereof.

And the said Reddish, as such administrator, exhibits this his libel in a cause of pilotage, civil and maritime, against the steamship Pacific, whereof John S. Butters is master, now lying in the port of San Francisco, in the said district, and within the admiralty and maritime jurisdiction of this court, her boats, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein in a cause of pilotage, civil and maritime; and there-

10 fore the said Reddish doth allege and articulately propound as follows, to wit:

First. That between the 28th day of 28*th day of* September, 1861, and the 27th day of February, 1863, the said William Griffin was a pilot duly licensed and qualified according to the laws of the State of California, and of the statutes of the United States in such case made and provided, to pilot vessels into and out of the harbor of San Francisco, and by said laws to offer his services to pilot vessels into and out of port, and in case such service be refused or declined, to claim and demand of the master of the said ship, the owners thereof, and of the ship, the one-half of the pilotage allowed by the said laws for the actual service rendered.

Second. That between the dates aforesaid the said Griffin having in readiness and being in command of pilot boats, in all respects provided as by law required, and of sufficient burden, which said boats were within the port of San Francisco, and within the flux and reflux of the sea, and within the admiralty and maritime jurisdiction of this honorable court, did tender and offer his services to the

11 master of said steamship, then lying in the port of San Francisco, within the ebb and flow of the tide, to pilot said ship out of the heads to sea, which service was then and there refused

and declined by the said master then in charge of said steamship, on each and every occasion hereinafter stated and set forth.

Third. That when the services were tendered and declined at the respective dates hereinafter mentioned, the said steamship was prepared to start for a voyage to sea, bound for a foreign port, with freight and passengers on board, ready for immediate departure, and cleared at the custom-house for said voyage.

Fourth. That at the respective dates hereinafter mentioned the said steamship was in charge at different times of different masters.

Fifth. That the said ship was within said dates, and is now, owned by the California Steam Navigation Company, a company incorporated under the laws of the State of California, whose principal place of business is in San Francisco.

12 Sixth. That the said steamship is of the burden of one thousand and three tons, and of the draft of from eleven and one-half feet to 13 feet, as set forth in the schedule hereto annexed and made part of this libel, marked A.

Seventh. That within the date referred to in said schedule and under an act of the legislature of the State of California, entitled An act to establish pilots and pilot regulations for the port of San Francisco, approved on the 20th of May, 1861, the said Griffin was entitled to charge and demand for services actually rendered in piloting vessels of over five hundred tons seven dollars per ton draught, and four cents per foot for each and every ton of her registered measurement, and for the tender of service and the refusal thereof by the master, to one-half of the rates aforesaid.

13 Eighth. That the said steamship was not, on any one of the occasions named in said libel, in tow of a steam-tug outward bound.

Ninth. That the said Griffin did actually speak said steamship on the several occasions named in said schedule by tendering his services to pilot said ship to sea as aforesaid, in all fifteen times, within the said dates hereinbefore mentioned, and that under said law he thereby became entitled to demand and receive, in all, the sum of $911 65, for which sum, under the said law, the said steamships, their tackle and furniture, and the master and owners thereof, are jointly and severally liable to be recovered in this honorable court.

Tenth. That neither the said master nor the said owners has paid to the said Griffin nor to the libellant either of the said sums of money, or any part thereof, although often requested so to do, and

14 the same remain wholly unpaid and due.

Eleventh. That all and singular the premises are true.

Wherefore the libellant prays that the process in due form of law may issue against the said steamship "Pacific," her boats, tackle, apparel, and furniture, and that this honorable court will pronounce for the aforesaid demand, and decree the same to be paid with costs; and for such other and further relief and redress as to right and justice may appertain, and as the court is competent to give in the premises.

GREGORY YALE, *Proctor.*

J. N. McCONNELL, *Advocate.*

15 B.—*Claim.*

The claim of the California Steam Navigation Company to the steamship Pacific, interposed to the libel of Thomas J. Reddish, administrator, &c.:

And now comes the California Steam Navigation Company, and says that it is the true and lawful owner of said steamship, and that no other person is the owner thereof.

WM. BARBER, *Proctor for Cl't.*

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

B. M. Hartshorne, of said district, being duly sworn, says that he is the vice president of the California Steam Navigation Company, and that the above claim is true.

B. M. HARTSHORNE.

Subscribed and sworn to before me, this 15th day of July, A. D. 1865.

DAN'L J. SULLIVAN, *U. S. Com'r.*

16 C.—*Exceptions.*

U. S. district court, in admiralty.

The exceptions of the California Steamship Navigation Company, claimant and respondent, to the libel of Thomas J. Reddish, special administrator, &c., against the steamship Pacific:

The respondent excepts to the sufficiency of the said libel and the allegations therein contained, and says that he is not bound to answer the same or any part thereof.

First. Because the said libel does not state or set forth any cause of action of which this court has jurisdiction.

Secondly. Because it appears on the face of the said libel that the supposed causes of action therein set forth are, and that each of them is, barred by lapse of time and by the statute of limitation of the State of California.

WM. BARBER, *Proctor for Resp't.*

17 E.—*Order.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court room in the city of San Francisco, on Wednesday, the 23d day of August, in the year of our Lord one thousand eight hundred and sixty-five.

Present, the honorable Ogden Hoffman, district judge.

THOMAS J. REDDISH, adm'r, &c., *vs.* STEAMSHIP PACIFIC. } Order.

The exceptions to the libel in this case coming on to be heard, now

at this day, after hearing the argument of the proctors for the
18 respective parties, and due deliberation had, it is ordered that the said exceptions be, and they are hereby, overruled.

UNITED STATES OF AMERICA, *Northern District af California, ss:*

REDDISH, &c., *vs.* STEAMSHIP PACIFIC.

I, George C. Gorham, clerk of the district court of the United States, northern district of California, do hereby certify that the above and foregoing is a full, true, and correct copy of the original libel, claim, exceptions to libel, and order overruling the same, in the aforesaid-entitled cause, as the same now remains of record and on file in my office.

Witness my hand and the seal of the said district court, affixed at the city of San Francisco, this eighth day of January, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of the United States the 90th.

[SEAL.] GEO. C. GORHAM, *Clerk*,
By SAM'L NEALL, *Deputy Clerk*.

[5-cent rev. stamp.]

19 D.

U. S. district court, in admiralty.

THOMAS J. REDDISH *vs.* THE STEAMER PACIFIC.

This is a libel in rem to recover half pilotage fees alleged to be due the libellant.

It is not denied that the facts alleged are sufficient to entitle the libellant to recover under the laws of this State regulating pilotage.

It is objected that this court has no jurisdiction over the subject-matter of the controversy; and,

Secondly. That it is has no jurisdiction to enforce the demand in a proceeding in rem, as in ordinary cases of maritime liens.

1. The admiralty and maritime jurisdiction of the courts of the United States over suits for pilotage on the high seas and on waters navigable from the sea as far as the tide ebbs and flows has been expressly asserted by the Supreme Court, and has long been exercised by the district and circuit courts.

The service is strictly maritime, and falls within the well-established principles on which the admiralty jurisdiction of the United States consuls is grounded.—(The Ams. 1, Mas. 508, Hobart *vs.* Drogan, 10 Peters R., 108.)

Nor is this jurisdiction impaired by the circumstance that Congress has not seen fit, by independent legislation, to establish a general system of pilotage throughout the United States, but has adopted the regulations framed by the various States for the purpose.

The only effect of this provision is to leave the jurisdiction concurrent in the State courts, and to limit the recovery to the sum to which the pilot, if he sued in the State courts, would be entitled.—(Hobart *vs.* Drogan, ubi sup.)

But it is urged that though a pilotage service is a strictly maritime service, an offer, not accepted, to pilot a vessel in or out of a harbor has no such quality. That it is in no sense a maritime contract, and that therefore the right to have pilotage, when given in such cases by State laws, cannot be enforced in an admiralty tribunal.

But this question seems to be substantially decided by the Supreme Court in the case of Cooley *vs.* The Board of Wardens of the port of Philadelphia, (12 How. R., 311,) and in the recent case of the Pacific M. S. S. Co. *vs.* Joliffe, (not reported.)

20 In the latter case the court say:

"The claim to half pilotage fees, it is true, was given by the statute, but only in consideration of services tendered. The object of the regulations established by the statute was to create a body of hardy and skilful seamen, thoroughly acquainted with the harbor, to pilot vessels seeking to enter or depart from the port, and thus give security to life and property exposed to the dangers of a difficult navigation. The object would, in a great degree, be defeated if the selection of a pilot were left to the option of the master of the vessel, or the exertions of a pilot to reach the vessel in order to tender his services, were without any remuneration. The experience of all commercial nations has shown the necessity, in order to create and maintain an efficient class of pilots, of providing compensation, not only when the services tendered are accepted by the master, but also when they are declined. If the services are accepted a contract is created between the master or owner of the vessel and the pilot, the terms of which are, it is true, fixed by the statute, but the transaction is not less a contract on that account. If the services are declined, the *half fees allowed are by way of compensation for the exertions and labor made by the pilot, and the expenses and risks incurred by him, in placing himself in a position to render the services which, in a majority of cases, would be required.*"

The transaction in this latter case between the pilot and the master or owners cannot be strictly termed a contract, but it is a transaction to which the law attaches similar consequences; it is a quasi contract. The absence of assent on the part of the master or owner does not change the case. In that large class of transactions designated in the law as implied contracts, the assent or convention, which is an essential ingredient of an actual contract, is often wanting. Thus if a party obtain the money of another by mistake, it is his duty to refund it, not from any agreement on his part, but from the general obligation to do justice which rests upon all persons. In such case the party makes no promise on the subject, but the law, consulting the interests of morality, implies one, and the liability thus arising is said to be a liabillity on an implied contract. (Argenti *vs.* San Francisco, 16 Cal., 282; Maine on Ancient Law, 244.) The claim for half pilotage stands upon substantially similar grounds.

These observations seem to me decisive of the point under consideration.

If the claim to half pilotage be founded on a contract, or quasi contract, *implied from the tender of services* and the provisions of the statute giving a compensation for such tender, *the contract so implied must be deemed a maritime contract.* It is not denied that the subject of pilotage is within the control of Congress. The act, therefore, of 1789 which required all pilots to continue to be regulated in conformity with the existing laws of the States respectively was an adoption by Congress of those laws, and gave to them, or at least to those then existing, the force of a direct enactment by Congress on the subject. It is an essential feature of those laws to give to the pilot compensation for the duties he performs, the exertions he makes, and the expenses he incurs, even when the master sees fit to de-
21 cline his services. It is a part of a general system deemed indispensable for the attainment of the object for which the system is established. As, then, the service of a pilot in conducting a vessel into or out of a port is admitted to be in its own nature a maritime service, there would seem to be no reason to attribute a different character to his service in sailing out to meet her, in speaking or boarding her, and offering her his assistance. The pilots are obliged by law to give bond for the faithful performance of their duties, to keep at all times boats in good condition, and are subject to severe penalties and liabilites for neglect of duties. They are forbidden to be absent from duty for more than one month, except upon leave, and they are compelled to afford their services at fixed rates established by law. They thus form a body of men whose whole business and duties are intimately connected with the "trade and business of the sea," and I perceive no reason for refusing to regard *whatever they do in the discharge of their duties as pilots as a maritime* service, and entitling them to the compensation allowed by law to be recovered in an admiralty tribunal.

The pilot who, at a considerable distance from land, in his own boat, and with much labor and perhaps risk, speaks an inward-bound vessel to offer his services, (services which by the laws of some States the master is bound to accept,) may be said to *have performed, even when his offer is declined, a strictly maritime service,* and there would seem to be no substantial reason for discriminating between such a case and the case of the pilot who on shore makes a similar tender to the master or owners of an outward-bound vessel.

In either case, the *offer to perform* the duties required of him by law appears in itself to be a *maritime service,* or an act which, as a part of general system instituted for important purposes connected with commerce and the navigation of the seas *ought to be considered.*

2. It is urged that even if the subject-matter of this suit be of admiralty jurisdiction, the pilot has no right to proceed in rem to recover half pilotage fees.

The 23d section of the California statute, with respect to pilots, provides that all vessels, their tackle, apparel, and furniture, and the master and owners thereof, shall be jointly and severally liable for pilotage fees, to be recovered in any court of competent jurisdiction.

It is contended that these words do not create a lien, but merely declare a liability which is to be enforced in the State courts alone.

There can, I think, be no doubt that the pilotage fees for which the vessel is declared liable include, as to all, half pilotage fees earned by speaking a vessel, and the offer of services, as the full fees allowed when the services are accepted and performed. It may with much reason be contended that if the liability to pay half pilotage is to be considered, as the Supreme Court have decided, as a liability growing out of a contract or quasi contract of the master implied by law, on general principles of maritime law a lien on the vessel to secure the fulfilment by the master of his part of the contract would result, unless the statute which gives the right expressly withholds such remedy.

22 In Harmon *vs.* Green, 10 Cal., 94, the court speaks of half pilotage as a compensation dependent upon the rendering of certain services and the discharge of certain duties incident to the office of pilot. * * * * * * *

"This section clearly shows that certain duties were required of pilots, and certain compensation given in consideration therefor. We have no doubt that for reasons of public policy the legislature had a right to require the tendering of those services, and also to prescribe a compensation therefor."

If this view of the nature of half pilotage fees be correct, and if the *services and duties* for which this compensation is allowed be regarded (as I think they must be) as *maritime* in their nature, a lien would attach to the vessel on the general principles on which admiralty liens are founded, unless, as before observed, the statute giving the right to the compensation restricts the pilots to remedies merely in personam. But the California statute declares, in broad terms, that "the vessel, her tackle, apparel, &c., shall be liable."

It is said that these words declare a liability, but create no lien capable of enforcement in an admiralty court.

In support of this position the case of Samuel Strong (Newbury's Reports, 193) is cited. The case referred to arose under the laws of Ohio, subjecting certain water craft to liability for the demands of mechanics, material, men, &c.

The suit was for materials furnished to a vessel in her home port. It was therefore a case where, under the decisions of the Supreme Court, no lien existed unless given by the law of Ohio. The law supposed to give a lien was entitled "An act for the collection of claims against steamboats, &c., and authorizing the proceeding against the same by name."

The first section declared certain vessels "liable" for certain debts contracted by the master. The second section provided that any person having the demands referred to might proceed against the owner or master or against the *craft itself*.

The remaining sections minutely prescribed the proceedings to be taken when the vessel was sued by name.

It was held by the State courts of Ohio that this statute merely

gave a new remedy; that it subjected the vessel to mesne process and authorized the substitution of her name as defendant instead of the owner or master, who might be absent or unknown. It therefore did not create a lien, but declared a liability to be enforced in the mode and by the proceedings prescribed in the statute.

The United States district court, as it was bound to do, *adopted the construction of the statute given by the State tribunals.*

Even in the California statute concerning pilots no mode of enforcing the liability in rem is pointed out. It cannot be said that a special proceeding is prescribed where the vessel may be substituted as defendant in place of the master or owners, and her liability enforced in a particular mode. The liability of the vessel for pilotage fees is declared in the most general terms, and as the legislature must have been aware that for services in piloting a vessel into or out of port, a lien in rem notoriously existed, it is unreasonable to suppose that they meant to impair that right by limiting the liability of the vessel to a mere liability to be proceeded against by name, and which would constitute no lien upon her until actually seized.

If, as must be admitted, a lien in rem enforceable in the admiralty exists for full pilotage fees for services actually rendered, a similar lien must, under the language of this statute, be held to exist for half pilotage fees, which are but "a compensation allowed by law for the rendering of certain services and the discharge of certain duties incident to the office of pilot."

Both are parts of one system, both are of a maritime nature, and for both the vessel is declared to be "liable."

I see no reason for discriminating between them.

The exceptions are overruled.

Filed February 6, 1866.

23 *Motion for a prohibition in the matter of Thomas J. Reddish, special administrator of William Griffin, deceased, libellant, vs. The steamship Pacific.*

Supreme Court of the United States.—December term, 1865.

THE UNITED STATES
vs.
THE HONORABLE OGDEN HOFFMAN, judge of the United States for the northern district of California. } 10 original.

Upon consideration of this suggestion and motion and of the argument of Mr. Carlisle, of counsel, in support thereof, it not appearing that any notice of the motion hath been heretofore given to the said district court or to the libellant, it is therefore ordered that a rule issue to the said district judge, to show cause why the prohibition be not granted as prayed; and that the said rule be returnable on the first Monday of December next, and that further proceedings in the said district court upon the said libel be stayed until the further order of this court in the premises: Provided, that a copy of this

order and the rule thereby granted be served upon the said district judge, and upon the proctor for said libellant, sixty days before the return day of the said rule.

19 Feb., '66.

24 I, D. W. Middleton, clerk of the Supreme Court of the United States do hereby certify that the foregoing is a true copy of the rule and order as extracted from the minutes of said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Supreme Court, at the city of Washington, this twentieth day of February, A. D. 1866.

[SEAL.]

D. W. MIDDLETON,
Clerk Sup. Ct. U. S.

[5-ct. int. rev. stamp.]

25 District court of the United States for the district of California.

THE UNITED STATES
vs.
THE HONORABLE OGDEN HOFFMAN, judge of the United States for the northern district of California.

Supreme Court of the U. S., Dec. term, 1865.

I, Ogden Hoffman, judge of the said district court of the United States for the district of California, for return to the rule hereto attached, issued by the Supreme Court of the United States, on the nineteenth day of February, 1866, on the motion for a prohibition in the matter of Thomas J. Reddish, special administrator of William Griffin, deceased, libellant, *v.* the steamship Pacific, do make return to the said rule, as follows: That after the service of the said rule upon me, to wit, on the second day of July, 1866, a motion in writing was filed in this court, by Gregory Yale, the proctor of the libellant, after being duly served on William Barber, proctor for the claimant of said ship Pacific, that on the tenth day of July, 1866, he would move the court for leave to dismiss the said libel, upon the payment of costs to be taxed; that the said motion was regularly continued in said court by the consent of the proctors of the respective parties until the 21st day of July, 1866, when the same was argued
26 by the said proctors and submitted to the court for consideration and decision. That on the thirtieth day of July, 1866, the court having duly considered the motion submitted as aforesaid, ordered that the said libel be dismissed on payment of costs. That on the third day of August, 1866, William Barber, proctor as aforesaid, filed his bill of costs in said court, amounting to the sum of $49 20. That on the ninth day of August, 1866, Gregory Yale, proctor as aforesaid, filed in said court the receipt of the said Barber for the payment of said costs in said amount.

And that no other or further proceedings were taken in said case,

from the time of the service of the said writ to the present date, than as above stated.

All of which is hereby certified under my hand as judge aforesaid, and under the seal of the said district court, on this seventeenth day of October, A. D. 1866.

[SEAL.] OGDEN HOFFMAN,
Dist. Judge.

Filed 16 November, 1866.

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Supreme Court of the United States.

DECEMBER TERM 1866, No. 9, ORIGINAL.

THE UNITED STATES,

vs.

THE HON. OGDEN HOFFMAN, DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA.

In this cause, at December Term, 1865, upon the suggestion of the California Steam Navigation Company, a rule was granted requiring the respondent to show cause upon the first day of the present term, why a writ should not issue prohibiting him from entertaining any further jurisdiction over a certain cause pending in the said district court, wherein Thomas I. Reddish was libellant, and the California Steam Navigation Company was claimant, and ordering that further proceedings in the said district court upon the said libel, be stayed until further order of this Court in the premises.

To this rule the respondent makes return, in effect, that after the service thereof, a motion was submitted to and entertained by the said court on behalf of the libellant, in the said cause, that his libel be dismissed with costs; and that after argument by the proctors of both parties—*pro et contra*—the said motion was allowed, and the court thereupon ordered that the said libel be dismissed on the payment of costs, which was accordingly done.

It is now submitted that the return shows no sufficient cause why the prohibition should not be granted as prayed, and that the same should issue *non obstante* the return.

I.

The only fact stated in the return which can be alleged as cause why the prohibition should not issue, is that the libel has been dismissed by the order of the district court. This, however, was done after the rule was issued, and

after it had been served, and against the objection of the party here suing for the prohibition, and while the question of the writ was *sub judice*, and was against the express mandate in the rule, "that further proceedings in the said district court upon the said libel be stayed until the further order of this Court in the premises." (Rec., pp. 10, 11.) It is therefore wholly impertinent to the return, and is at best mere surplusage.

But if such subsequent proceedings be properly before the Court they present no objection to the writ. The law upon this subject is fully stated by Lord Coke, (2 Inst., 602,) as follows:

"*Objection.*"

"*As touching the time when prohibitions are granted, it seemeth strange to us that they are not only granted at the suit of the defendant in the ecclesiasticall court after his answer, whereby hee affirmeth the jurisdiction of the said court, and submitted himself unto the same; but also after all allegations and proofes made on both sides, when the cause is fully instructed and furnished for sentence; yea, after sentence; yea, after two or three sentences given, and after execution of the said sentence or sentences, and when the party for his long continued disobedience is laid in prison upon the writ of excommunicat capiendo, which courses forasmuch as they are against the rules of the common law in like cases, (as we take it,) and doe tend so greatly to the delay of justice, vexation, and charge of the subject, and the disgrace and discredit of his majesties jurisdiction ecclesiasticall, the judges (as we suppose,) notwithstanding their great learning in the lawes, will hardly be able in defence of them to satisfie your lordships*"

"*Answer.*"

"*Prohibitions by law are to be granted at any time to restraine a court to intermeddle with or execute anything which by law they ought not to hold plea of, and they are much mistaken that maintain the contrary. And it is the folly of such as will proceed in the ecclesiastical court for that whereof that court hath not jurisdiction or in that whereof the king's temporal courts should have the jurisdiction. And so themselves (by their extraordinary dealing), are the cause of such extraordinary charges, and not the law; for their proceedings in such case are coram non judice. And the king's courts that may award prohibitions, being informed either by the parties themselves, or by any stranger, that any court temporal or ecclesiastical doth hold plea of that (whereof they have*

not jurisdiction), *may lawfully prohibit the same as well after judgment and execution as before.*"

And the law continues the same to this day.

Paxton *vs.* Knight, 1 Burr, 313.
Buggin *vs.* Bennett, 4 Burr, 2,035.
Roberts *vs.* Humby, 3 Mees & W., 120.
Jones *vs.* Owen, 8 ~~A~~, Q. B.

These authorities, however, fall short of the present case, and the books, it is believed, furnish no instance of an inferior court proceeding in any direction or to any degree in the suit before it, while the very question of its jurisdiction was pending upon a motion for a prohibition in a superior court. Still less can any case be found of an inferior court so proceeding in the face of an express mandate to stay all proceedings in the premises until further order.

To allow the prohibition to be defeated in this manner would not only be against principle and precedent, but injurious and vexatious to the party suing here.

It appears by the suggestion that numerous other suits by libel against the vessels of the same party are pending in the same court, under precisely similar circumstances. (Rec., pp. 1, 2.) If that court has no jurisdiction in the premises, the prohibition in the present case would have disposed of all the others. But if the proceeding set up by the return be sanctioned, the same thing may be repeated in each of those cases; and in this manner onerous costs may be put upon the party suing for, and, as is here assumed, entitled to the protection of this Court, while he is still left exposed to the assertion of the same unfounded jurisdiction.

In the analogous case of an injunction, even where the defendant admitting the wrong discontinues it, and promises not to repeat it, the complainant is, nevertheless, entitled to the judgment of the Court for his protection.

Losh *vs.* Hague, Webs. Pat. Cases, 200.

By much greater reason should the prohibition issue in this case, as the question is one of jurisdiction, in which the public is concerned, when the writ will issue upon the suggestion of a stranger to correct a usurpation, as the authorities above cited show; whereas, in the absence of the writ, the records of the district court can only show that the libellant there, for some undisclosed reason, thought proper to withdraw his suit; the judge, by the record, still affirming his jurisdiction as to which he intimates no doubt in his return.

Upon the question of the jurisdiction of the district court, to entertain the suit against which the writ is prayed, the brief filed with the motion, with one or two additional authorities, is again respectfully submitted to the court, as follows:

II.

This Case.

The suggestion which conforms to the precedents shows that the district court for the northern district of California is proceeding as a court of admiralty and maritime jurisdiction upon a libel there filed, and which is exhibited (p. 3) upon a claim of one Reddich, administrator, against the steamship Pacific, to enforce a claim for half pilotage, under and by virtue of the 22d and 24th sections of the act of the legislature of the State of California, (Statutes, p. 597,) passed May 20, 1861; the former of which provides that "all vessels, their tackle, apparel, and furniture, and the masters and owners thereof, shall be jointly and severally liable for pilotage fees, to be recovered in any court of competent jurisdiction;" and the latter, that "when a vessel is spoken, and the services of a pilot declined, one-half of the (prescribed) rates shall be paid."

The respondent excepted to the libel on the ground that it did not set forth a case of which the court, as a court of admiralty, had jurisdiction.

The exception was overruled.

It appears by the suggestion that several other libels are pending in the same court against several other steamers belonging to the same owners, viz: the California Steam Navigation Company; but neither in this case nor in any of the others is the amount involved sufficient to authorize an appeal.

The fate of the present motion depends upon the question, whether the case in the district court is one "of admiralty and maritime jurisdiction" within the sense of the Constitution of the United States.

The only ground upon which such jurisdiction is pretended is that the statute imposing the liability for half pilotage creates a contract, and that this supposed contract is a maritime contract in the sense which gives such jurisdiction.

It is proposed, therefore, to consider upon this argument, first, *whether the obligation in question be a contract;* and, second, *if it be a contract, whether it is a maritime contract.*

1st. It is not pretended that there was any actual assent on the part of the master or owners of the vessel to any act on the part of the pilot by which this claim accrued to him. There was no obligation on the part of the master to accept the pilot's services. The liability of the vessel rests solely upon the provisions of the statute and the acts of the pilot. A mere legal liability created by statute may furnish the consideration or foundation of a contract, express, or implied, but is not of itself a contract. (Per Story, Justice, Bullard *vs.* Bell, 1 Mas., 288.)

2d. *But even if it was a contract, it was not a maritime contract.* It is not enough that such contract relates to the sea, or to a ship, or even to a particular voyage. This does not necessarily make it a maritime contract in the sense which is the test of this jurisdiction. Abundant instances of such contracts which are not maritime will readily suggest themselves to the mind of the Court. Perhaps the example which most forcibly illustrates the distinction ~~in~~ a case where there was a contract with a seaman in respect of a projected voyage, that he should have wages, or, at the option of the employer, not availing himself of his services he should be paid a certain sum. It was held in this latter alternative of the contract, that it was not a maritime contract. (Bee's R., 199, and authorities cited. See also Plummer *vs.* Webb, 4 Mas., 380, per Story J. Cutter *vs.* Rae, 7 How., 729. Schr. Freeman *vs.* Buckingham, 18 How., 182. Vandewater *vs.* Mills, 19 How., 82. The Cabaco 3 Blatchf. 75.)

There have been several cases before this Court respecting the validity of pilotage laws, and other regulations of commerce by the statutes of the several States. These are various in their provisions and legal effect, and may be of infinite variety according to the varying policy and supposed exigencies of the particular locality. The Pennsylvania statute was held by Mr. Justice Grier to impose a tax, and not to import a contract. (The Creole, 2 Wallace, Jr., 516.) This may serve as an example of such legislation. (See also the case of Martin *vs.* Hilton, 9 Metc., 373.)

The cases in this Court to which attention is invited are the following:

Cooley *vs.* The Board of Wardens, 12 How., 311.
The St. Lawrence, 1 Black, 522.
The Pacific M. S. S. Co. *vs.* Jolliffe, 2 Wall., 450.

Neither in these cases, nor in any other which has come before this Court, has the question of the *Federal* jurisdiction

8 How 391
10 Allen 108 } Ruppel & Nelson

in respect to such obligations been determined. It is now for the first time distinctly presented.

It is believed that no Court, either State or Federal, has determined that the obligation to pay half pilotage, imposed by a State statute, is a maritime contract.

It is obvious that the admiralty and maritime jurisdiction of the Federal courts cannot depend in any degree upon the will of the respective States. Although this Court, yielding to the peculiar geographical exigencies of the national commerce, has extended the admiralty jurisdiction to waters and places not theretofore supposed to be embraced by it, yet it is believed that in no instance has it intimated a disposition to qualify the nature or extend the subject-matter of that jurisdiction.

Upon the whole it is respectfully submitted that the writ of prohibition should issue.

J. M. CARLISLE,

Of Counsel, &c.

SUPREME COURT OF THE UNITED STATES.

PETITION OF THE

MILWAUKEE AND MINNESOTA RAILROAD CO.

FOR MANDAMUS, &c.

TO

CIRCUIT COURT OF THE UNITED STATES.

FOR THE DISTRICT OF WISCONSIN.

J. H. YEWDALE, Law Printer, 365 East Water St., Milwaukee.

Supreme Court of the United States.

TO THE MILWAUKEE & ST. PAUL RAILWAY COMPANY, AND TO

Alexander Mitchell, President of said Company,
S. S. Merrill, General Manager of said Company.
A. Reasoner, Superintendent of said Company.
Alanson Cary, Secretary of said Company.

To Washington Hunt, W. S. Gurnee, F. P. James, John W. Cary, Selah Chamberlain, Russell Sage, N. A. Cowdrey, C. B. Wesley, Horace Galpin, David M. Hughes and Daniel Wells, Jr., Directors of said Company.

To John W. Cary, Solicitor and Counsel of said Company :

Please take notice that on the opening of the Supreme Court of the United States, at the Capital in Washington City, in the District of Columbia, on the 7th day of December, A. D. 1866, or as soon thereafter, as counsel can be heard, the Milwaukee and Minnesota Railroad Company will exhibit and file the petition and exhibits hereto attached, and move the same for hearing and determination, in and by said Supreme Court.

Dated November 26, A. D. 1866.

MATT. H. CARPENTER.

Solicitor and Counsel for the Milwaukee and Minnesota Railroad Co.

To the Honorable, the Chief Justice and Justices of the Supreme Court of the United States.

The petition of the Milwaukee and Minnesota Railroad Company, a corporation created by and existing under the laws of the State of Wisconsin respectfully showeth:

That on the 9th day of December, A. D. 1859, Greene C. Bronson and James T. Soutter as Trustees, filed and exhibited in the District Court of the United States, for the District of Wisconsin, in equity, their bill of complaint against the La Crosse and Milwaukee Railroad Company, your petitioner and others as defendants to foreclose a certain mortgage before then given by the said La Crosse and Milwaukee Railroad Company to said complainants as trustee; that a final decree of foreclosure and sale was rendered in said cause on the 13th day of January, A. D. 1862; that said complainants appealed therefrom to the Supreme Court of the United States, and that pending said appeal, the said Greene C. Bronson departed this life; and thereafter said cause proceeded in the name of the said James T. Soutter, survivor, complainant; that said appeal was decided by this, the Supreme Court, at the December Term, A. D. 1863, and the mandate of this Court was filed in the Circuit Court of the United States, for the District of Wisconsin, and thereafter on the 27th day of September A. D. 1864, the said Circuit Court made an order determining the amount due and ordering that unless said sum should be paid within one year thereafter the said complainant should be entitled to an order to sell said mortgaged premises. That your petitioner had before then applied to said Circuit Court for an order authorizing your petitioner, on payment into Court of the whole amount due and claimed by said complainant, to enter into the possession of the said mortgaged premises, which were then held by a Receiver of said Circuit Court, which order the said Circuit Court, on division of its judges had denied; and that after the said Circuit Court entered said decretal order of sale September 27, 1864, your petitioner appealed to said Supreme Court therefrom; and said appeal was heard and determined by this Court at the December Term thereof in A. D. 1864; and that on said last named appeal being de-

termined by this Court, this Court sent its mandate to said Circuit Court which was duly filed in said Circuit Court on the 11th day of April A. D. 1865, among other things directing said Circuit Court as follows:

"And it is further ordered that this cause be and the same is hereby, remanded to the said Circuit Court with instructions to ascertain the amount due to complainants, within some reasonable time to be fixed by said Court, and to make an order that, on the payment of that sum, with the costs of complainants, into Court within said time, the receiver shall be discharged, and the railroad from Milwaukee to Portage City, with all the appurtenances, rolling stock, and other property, real and personal, belonging to said Division of road, be delivered by said receiver to the Milwaukee and Minnesota Railroad Company. And that no such discharge of the Receiver or delivery of the road and its appurtenances shall be made until said company shall first enter into bond with sufficient surety to pay to Sebre Howard and Selah Chamberlain, all such sums as may come into the hands of said Company, which shall hereafter be found to be rightfully applicable to the payment of their claims, if they shall be established as leins on said road."

That thereupon, and in obedience to said mandate last named, said Circuit Court on the 18th day of July, A. D., 1865, made an order in said cause as follows:

James T. Soutter, survivor, &c.,

vs.

The La Crosse & Milwaukee Railroad Company and others.

On motion of Matt. H. Carpenter, Solicitor of the Milwaukee & Minnesota Railroad Company, one of the defendants in this cause; and on the mandate of the Supreme Court of the United States in this cause;

Ordered that the whole amount due the complainants in this cause, and to become due before the day of sale of the mortgaged premises are estimated as now appears to be as follows, viz:

Amount fixed by order or decree *nisi*, $405,290,05, together with interest thereon since September 27, 1864. Coupons due March 1, 1865, $40,000 with interest thereon since that date. Coupons to be-

come due September 1, 1865, $40,000 with interest thereon from that date. Expenses, counsel fee, etc., allowed at $35,796.33, with interest thereon from this day.

Ordered further that in case said Milwaukee & Minnesota Railroad Company shall, before a sale of the mortgaged premises in this cause, pay to the clerk of this Court for the complainant in this cause the several sums above mentioned with interest thereon as aforesaid to the day of such payment, and the costs in this cause to be taxed, that upon such payment the said Receiver, Hans Crocker, and the said Milwaukee & St. Paul Railway Company, its officers, directors, agents and employees, deliver over to said Milwaukee & Minnesota Railroad Company, the Eastern Division, so called, of the La Crosse & Milwaukee Railroad, so called from Milwaukee to Portage, together with all the rolling stock that was on the whole of the La Crosse & Milwaukee Railroad, or belonged or appertained thereto when the said Receiver was appointed, except forty box cars numbered as follows, viz: 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408, and also deliver to said Milwaukee & Minnesota Railroad Company, such proportion of the rolling stock that was purchased by the Receiver as 121,178 dollars bears to 26,199 dollars, together with all the rights, privileges and franchises and personal and other property belonging or in any wise appertaining to said Railroad from Milwaukee to Portage, and that the said Receiver be thereafter dismissed and discharged, except for the purpose of passing his accounts.

Ordered further, that before the Milwaukee & Minnesota Railroad Company shall be allowed and permitted to enter into possession as aforesaid, it shall make, execute and file with the Clerk of this Court, a bond to the United States in the penal sum of twenty-five thousand dollars, with sufficient surety to pay to Sebra Howard and Selah Chamberlain, or the owners of said judgments or either of them, all such sums as may come into the hands of said Company, which shall hereafter be found to be rightly applicable to the payment of their claims, if they shall be established as liens upon said road. And that said Company execute its bond to Hans Croker, in the sum of twenty thousand dollars with sufficient surety to indemnify him for contingent liability mentioned in the report of the Auditor in this cause. Ordered further, that said Howard or Chamberlain may, at any time hereafter, apply to the Court for an additional bond if the circumstances of the case shall require it, both of said bonds hereinbefore mentioned, to be approved by the Clerk of this Court. Ordered further, that if the said Milwaukee & St. Paul Railway Company shall pay over the sum in its hands or any part thereof, as this day ordered, the said Milwaukee & Minnesota Railroad Company shall only be required to pay to the Clerk of this Court the balance of the amount so due said complainant at the date of payment by said last named Company, over such sums so paid by said Milwaukee & St. Paul Railway Company, and said Milwaukee & Minnesota Railroad Company shall be entitled to possession as hereinbefore mentioned, upon payment of such balance, and giving bonds as hereinbefore ordered.

That thereafter on the 28th day of September A. D. 1865, said Circuit Court made a decretal order of sale in said mortgaged premises, as follows:

" CIRCUIT OF THE UNITED STATES,
DISTRICT OF WISCONSIN.

At a regular term of the Circuit Court of the United States, for the District of Wisconsin, begun and held according to law, at the City of Milwaukee, in the District of Wisconsin, on the second Monday of September, 1865. Present, Hon. S. F. Miller, circuit judge, and Hon. A. G. Miller, district judge, on the 28th day of September, A. D. 1865.

JAMES T. SOUTTER, survivor, &c.,

vs.

The La Crosse and Milwaukee Railroad Company, The Milwaukee and Minnesota Railroad Company, Selah Chamberlain, Sebre Howard, Conrad Wallauer, Edward H, Brodhead, Newcomb Cleveland, William Gemmell, Joshua Hathaway, James Wolstenholrne, Edwin C. Litchfield, Ebenezer Higgings, George R. Mowry, Henry K. Eastman, Henry L. Simonds, De Witt C. Freeman, E. Bradford Greenleaf, Frederick Lind, Sebastian Knetzger, Lawrence G. Graham, Donald D. Scott, Thomas Turton, John Sercomb, Ephraim Mariner, Avery Hill, A. V. Rudd, Franklin J. Blair, Edmund R. Persons, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, J. Howard Mitchell, Edwin Townsend, the Mercantile Bank of Hartford Conn., August Sauthoff, Charles Quentin, John H. Tesch, Byron Kilbourn, Nathaniel S. Bouton, The Juneau Bank, The Milwaukee, Watertown and Baraboo Valley Railroad Company, Cicero Comstock, George W. Chapman, Moses M. Davis, Charles Howard and Henry Vallette.

On reading and filing the petition of the complainant, dated September 28, 1865, in this suit and on reading the decree made by this Court on the 27th day of September, A. D. 1864, and it appearing to the Court that the principal sum secured by the bonds and mortgage set forth in the complaint is one million dollars, that the amount found due for interest by the said decree remains unpaid, except the sum of sixty-two thousand four hundred and forty dollars, paid by the Receiver, leaving due at this date, with interest, the sum of three hundred and seventy-two thousand, one hundred and one and 87-100 dollars, and that two installments of interest have become due and payable since the said decree, amount with interest to the sum of eighty-one thousand, eight hundred and thirty-five and 52-100 dollars, and on motion of Thomas L. Ogden, solicitor for the complainant, it is ordered, adjudged and decreed, and this Court doth hereby order and decree, that all and

singular the mortgaged premises mentioned in the bill of complaint, in this cause and hereinafter described, or so much thereof as may be sufficient to raise the amount owing to the complainant for the several bondholders for principal, interest and costs in this cause, be sold at public auction, under the direction of the marshal of this District; and it is further ordered that the said sale be made at the Post Office in the City of Milwaukee, within this district, where the said premises are situated and that the said marshal give public notice of the time and place of such sale by advertisement published in some newspapers printed in said city, and in two newspapers printed in the city of New York, at least once in each week for twelve successive weeks previous to the day of sale. And that said complainant or any of the parties to this cause may become the purchaser thereof; and that said marshal execute a deed or deeds to the said purchaser or purchasers of the mortgaged premises, and that the said marshal pay to the complainant or his solicitor, out of the proceeds of such sale, their costs in this cause to be taxed, and which have not already been paid. And it is further ordered adjudged and decreed that the defendants and all persons claiming or to claim from or under them be forever barred and foreclosed of and from all equity of redemption and claim of, in and to said mortgaged premises and every part and parcel thereof, when said sale shall be confirmed.

And it is further ordered, adjudged and decreed, that the purchaser or purchasers of said mortgaged premises at such sale be let into the possession thereof, and that any of the parties to this cause who may be in possession of said premises or any part thereof, and any person who, since the commencement of this suit, has come into possession under them or either of them, deliver possession thereof to such purchaser or purchasers on production of the deed of said premises and a certified copy of the order confirming the report of sale.

And it is further ordered, and decreed that the purchaser or purchasers at such sale, may pay therefor in the bonds and Coupons of the La Crosse and Milwaukee Railroad Company, included in this decree, in proportion as the amount bid bears to the whole sum secured by the mortgage, after payment of costs and expenses of sale, and that the marshal report to the Court, the bonds secured by the said mortgage and the coupons of such bonds respectively by their amounts, and numbers respectively, not presented or paid to him in or toward the purchase of the said mortgaged premises, and also the share and amount

of the purchase money of the mortgaged premises, applicable to the payment of the bonds and coupons last mentioned.

And it is further ordered and decreed, that in case of a sale of the mortgaged premises under this decree, the proceeds shall be applied to the balance of the interest due, and if such proceeds exceed such balance, the same shall be applied to the future accruing interest down to the date of such sale, and if the proceeds exceed such balance, the same shall be applied to the principal of the bonds, in case the bondholders assent, or pro rata to those who may assent, and any remaining balance of said proceeds be invested, under the direction of the Court, for the payment of future accruing interest and ultimately for the principal.

And it is further ordered and decreed, that the Receiver, now in possession of the mortgaged premises, upon sale and confirmation thereof, be discharged, except as to the passing of his accounts.

The description of the property authorized to be sold under and by virtue of this order, is as follows, viz :

All and singular the Railroad of said Company, commencing in the city of Milwaukee, and running thence to Portage city, a distance of ninety-five miles, which road has been constructed, and is now in full operation, and also the railroad of said Company (as well that part which has been constructed, as that part which remains to be constructed), from Watertown, by way of Columbus to Midland, (where it connects with the main line of the railroad of said Company) a distance of forty miles, one-half of which last mentioned road, being the part between Watertown and Columbus, was constructed at the time of the execution of the said mortgage and was then in full operation, including all and singular the several tracts, pieces or parcels of land which then did or might thereafter constitute the site of the roadway, *town sites*, engine houses, work shops, depots, and other buildings, and all the other land and real estate which then constituted, or might thereafter constitute or be a part of or appertain to said railroads, or either of them ; and also all and singular the superstructure of said railroads, whether then made or made thereafter, and all the engine houses, work shops, depots, and other buildings, and all the other improvements on or appurtenant to said railroads, or either of them, whether then built or made, or thereafter built or made ; and also all and singular the locomotive engines, cars, and rolling stock, and all the materials, tools, implements, and utensils and other personal property which had been pro-

cured for, or used in connection with said roads or either of them, prior to the appointment of Hans Crocker as Receiver of said road, except forty box cars numbered respectively 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, and 408, and including as part of said mortgaged premises such proportion of the rolling stock bought by the Receiver since his appointment as the net earnings of the Eastern Division of said railroad bear to the earnings of the Western Division, as ascertained by the report of H. L. Palmer, and as confirmed by the Court; and also all and singular the rights, liberties and franchises of said railroad Company, so far as they relate to said railroads from Milwaukee to Portage City, and from Watertown by way of Columbus to Midland aforesaid, and all the property, real and personal, and all the rights, liberties, privileges and franchises of said railroad Company, so far as they relate to said railroads from Milwaukee to Portage City, and from Watertown by the way of Columbus to Midland. It is further ordered, that the Marshal sell all the other property mentioned in this decree first, and before he sells the railroad from Watertown by way of Columbus to Midland, and that this shall not be sold if that which is first sold shall bring a sufficient sum to satisfy the debt, interest and costs, mentioned in this decree.

It is further ordered and decreed that this decree shall not prejudice the rights of the Milwaukee and Minnesota Railroad Company under the order of the Court in this cause, and made on the 18th day of July, A. D. 1865, providing for the entry of said Company into possession of the said mortgaged premises, on certain terms and conditions fixed by said order, and the said Milwaukee and Minnesota Railroad Company shall be at liberty to avail itself of the provisions of the said order, notwithstanding this decree, at any time before the sale of said mortgaged premises in this cause.

SAM. F. MILLER,
A. G. MILLER.

That thereafter, on or about the 3d day of January, A. D. 1866, your petitioner paid to the Clerk of said Circuit Court, the full amount due said complainant in this cause, under the decrees and orders therein, including all costs, and gave the bonds required by said order of said Circuit Court, of the 18th day of July, A. D. 1865, which were duly

approved by the Clerk of said Circuit Court, and thereafter your petitioner demanded of Hans Crocker, Esq., the Receiver in said cause, and of the Milwaukee and St. Paul Railway Company, and its officers and directors, possession of the said mortgaged premises in this cause, mentioned in said order of July 18, 1865, and served upon them copies of said order, and of the bonds given by your petitioner under the same, duly certified under seal of said Court, together with a certificate of the clerk of said Circuit Court, under the seal of said Court, showing the payment of said sum by your petitioner, as hereinbefore stated.

That the said Milwaukee and St. Paul Railway Company, its officers and directors refused to comply with said order of July 18, 1865, and refused to deliver to your petitioner a large amount of said rolling stock to which your petitioner was entitled under said order, and which was then in the possession of said Milwaukee and St. Paul Railway Company. That thereupon and thereafter at the April term of said Circuit Court, A. D. 1866, your petitioner filed in said court proper proofs of the foregoing facts; (a copy of which hereunto attached, and which your petitioner hereby begs leave to refer to as a part of this petition, with the same effect as though the facts therein set out and proved were here again set out according to their legal effect;) and moved said Circuit Court for an order in said cause, directing an attachment to issue out of and under the seal of said Court in due form of law against Alexander Mitchell, President of the Milwaukee and St. Paul Railway Company, S. S Merrill, Manager of said Company, A. Reasoner, Superintendent of said Company, A. Cary, Secretary and Treasurer of said Company, and Washington Hunt, W. S. Gurnee, Frederick P. James, John W. Cary, Selah Chamberlin, Russell Sage, N. A. Cowdrey, C. B. Wesley, Horace Gilpin, David M. Hughs and Daniel W lls Jr.. directors of said Company, and that such proceedings might be thereupon had as should be agreeable to equity and good conscience, to convict said officers and directors of said Company of contempt of said Circuit Court, for disobedience to and refusal to comply with the order of said Court of July 18th, 1865; and that such officers might be held in close custody until they should obey said order by delivering possession of said rolling stock under and according to said order; and for such other and further or different relief in the premises as should be agreeable to equity and good conscience.

And for an order sequestrating the stock railroad, property real and personal assets and effects of said Milwaukee and St. Paul Railway

Company, and for appointment of sequestrators to receive, hold and manage the same until said last named company, its officers and directors should comply with the said order, and until said company should pay or caused to be paid all damages to your petitioner arising from the said disobedience, or until such other time as said Court should direct, and for other relief; and that said motion was fully heard in said Circuit Court and was then denied by said court on a division of the judges thereof, as appears by the record in said cause remaining in said Circuit Court, the District Judge, judge of said Court, being opposed to the granting of said motion.

Your petitioner further showeth that the appeals subsequently taken by some of the parties to said cause from other orders of said Court in said cause, have removed into this Court the entire record in said cause to a day subsequent to the refusal of said Court to grant said orders prayed for by your petitioner as last aforesaid; and your petitioner prays leave to refer to the same, and to any part or parts thereof, with the same effect as though the same were here set out fully, according to its legal effect.

Your petitioner further showeth, that by the refusal of said Circuit Court to grant said motion, or any part thereof, your petitioner is left without remedy to enforce performance of said order, except by application to this Court as here made, as your petitioner is advised and verily believes.

Your petitioner further shows that said order denying said motion, is entered of record in said cause as follows:

"April 15, 1866. This day came the parties by their counsel, and the motion of the Milwaukee and Minnesota Railroad Co., for an attachment against the officers and directors of the Milwaukee and St. Paul Railway Company, for contempt, and for sequestration of the stock of said Company, &c., having been argued by counsel, and the Court being divided in opinion, it is ordered by the Court that said motion be and the same hereby is denied upon such division of opinion."

Your petitioner further showeth that the papers upon which your petioner moved in said Circuit Court for said order, and the motion itself, and answer of said Milwaukee and St. Paul Railway Company thereto, are attached hereto as exhibits, and your petitioner prays that they may be considered as a part of this petition with the same effect as of the same facts were again repeated, and said papers were fully set forth according to their legal effect.

Wherefore your petitioner prays that a writ of *mandamus* may be issued out of and under the seal of this Court, to be directed to the judges of the Circuit Court of the United States, for the District of Wisconsin, strictly commanding them, in said Circuit Court to issue said writ of attachment, as prayed and moved by your petitioner as aforesaid, and to sequestrate the stock, railroad, real and personal property, assets and effects of said Milwaukee and St. Paul Railway as prayed and moved for, in said Court by your petitioner as aforesaid; and to proceed in all things to execute said order of July 18th, 1865, and compel obedience thereto, according to law and the practice of said Court.

Or, if your honors shall be of opinion that the precise relief hereby prayed ought not to be granted, that your honors will issue a writ of mandamus to the said judges of the said Circuit Court, in such other form and effect as your petioner may be entitled to, to compel said Circuit Court to enforce, and compel obedience to said order of July 18, 1865, by said Milwaukee and St. Paul Railway Company, its officers and directors, agents and employees;

Or, that your Honors will grant such other or different writ, or proceeding, as shall secure to your petitioner the benefit of said order of July 18th, 1865, as your petitioner may be entitled to and as shall be agreeable to equity and good conscience.

Or that a writ of attachment may be issued out of and under the seal of this Court in due form of law, against the said officers and directors of said Milwaukee and St. Paul Railway Company, and that they may be arrested and dealt with as for contempt of this Court; and the property, stock and assets of said Company may be sequestrated by order of this Court, until said Company shall comply with said order and obey and perform the same.

Or that your petitioner may have such other, fnrther or different relief as shall be agreeable to equity and good conscience, and the nature of the case map require.

The Milwaukee and Minneso a Railroad Company.

BY MATT. H. CARPENTER,
Its Solicitor and Counsel.

DISTRICT OF WISCONSIN, ss.

Alexander Fleming being first duly sworn says that he is a director Vice President and agent of the Milwaukee and Minnesota Railroad Company, a corporation under the laws of the State of Wisconsin ; that he has charge of the litigation in which said Company is interested as its agent by express appointment of its board of directors, and that he makes this verification on its behalf.

That he has heard read and knows the contents of the foregoing petition of said company, and that the same is true of his own knowledge.

ALEXANDER FLEMING.

Subscribed and sworn to before me this 26th day of November, A. D. 1866.

A. SCOTT SLOAN,

Clerk of the ..... Court of the United States for the District of Wis.

JAMES McFARLIN,

Dep'y.

EXHIBIT "A."

UNITED STATES OF AMERICA, } ss.
DISTRICT OF WISCONSIN. }

At a stated term of the Circuit Court of the United States of America, for the Ninth Circuit and District of Wisconsin, begun and held according to law, on the second Monday of April, A. D. 1865, at the City of Milwaukee, in said District of Wisconsin, present and presiding Hon. Samuel F. Miller, Associate Justice of the Supreme Court of the United States, assigned to the said Circuit, and the Hon Andrew G. Miller, District Judge : On the twentieth day of the term, to wit, on the eighteenth day of July, A. D. 1865, the following proceedings were had, to-wit:

James T. Soutter, survivor, &c.,

vs.

The La Crosse & Milwaukee Railroad Company and others.

On motion of Matt. H. Carpenter, Solicitor of the Milwaukee & Minnesota Railroad Company, one of the defendants in this cause ; and on the mandate of the Supreme Court of the United States in this cause ;

Ordered that the whole amount due the complainants in this cause, and to become due before the day of sale of the mortgaged premises are estimated as now appears to be as follows, viz :

Amount fixed by order or decree *nisi*, $405,290.05, together with interest thereon since September 27, 1864. Coupons due March 1, 1865. $40,000 with interest thereon since that date. Coupons to become due September 1, 1865, $40,000, with interest thereon from that date. Expenses, counsel fee, etc., allowed at $35,796.33, with interest thereon from this day.

Ordered further that in case said Milwaukee & Minnesota Railroad Company, shall, before a sale of the mortgaged premises in this cause, pay to the Clerk of this Court for the complainants in this cause the several sums above mentioned with interest thereon as aforesaid to the day of such payment and the costs in this cause to be taxed, that upon such payment the said Receiver, Hans Crocker, and the said Milwaukee & St. Paul Railway Company, its officers, directors, agents and employees, deliver over to said Milwaukee & Minnesota Railroad Company, the Eastern Division, so called, of the La Crosse & Milwaukee Railroad, so called from Milwaukee to Portage, together with all the rolling stock that was on the whole of the La Crosse & Milwaukee Railroad, or belonged or appertained thereto when the said Receiver was appointed, except forty box cars numbered as follows, viz : 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408, and also deliver to said Milwaukee & Minnesota Railroad Company, such proportion of the rolling stock that was purchased by the Receiver as 121,178 dollars bears to 26,199 dollars, together with all the rights, privileges and franchises and personal and other

property belonging or in any wise appertaining to said Railroad from Milwaukee to Portage, and that the said Receiver be thereafter dismissed and discharged, except for the purpose of passing his accounts.

Ordered further, that before the Milwaukee & Minnesota Railroad Company shall be allowed and permitted to enter into possession as aforesaid, it shall make, execute and file with the clerk of this Court, a bond to the United States in the penal sum of twenty-five thousand dollars, with sufficient surety to pay to Sebra Howard and Selah Chamberlain, or the owners of said judgments or either of them, all such sums as may come into the hands of said Company which shall hereafter be found to be rightly applicable to the payment of their claims, if they shall be established as liens upon said road. And that the said Company execute its bond to Hans Croker, in the sum of twenty thousand dollars with sufficient surety to indemnify him for contingent liability mentioned in the report of the Auditor in this cause. Ordered further, that said Howard or Chamberlain may, at any time hereafter, apply to the Court for an additional bond if the circumstances of the case shall require it, both of said bonds hereinbefore mentioned, to be approved by the Clerk of this Court. Ordered further, that if the said Milwaukee & St. Paul Railway Company shall pay over the sum in its hands or any part thereof, as this day ordered, the said Milwaukee & Minnesota Railroad Company shall only be required to pay to the Clerk of this Court the balance of the amount so due said comp'ainant at the date of payment by said last named company, over such sums so paid by said Milwaukee & St. Paul Railway Company, and said Milwaukee & Minnesota Railroad Company shall be entitled to possession as hereinbefore mentioned, upon payment of such balance, and giving bonds as hereinbefore ordered.

CIRCUIT COURT OF THE UNITED STATES.

FOR THE DISTRICT OF WISCONSIN.—IN EQUITY.

James T. Soutter, survivor, &c., Trustee, Complainant,

vs.

The La Crosse & Milwaukee Railroad Company, The Milwaukee & Minnesota Railroad Company and others.

Know all men by these presents, That the Milwaukee & Minnesota Railroad Company, as principal and William R. Griffith, Albert C. Gunnison and Alex. Fleming, sureties, acknowledge themselves to be held and firmly bound unto the United States of America, in the penal sum of twenty-five thousand dollars lawful money of the United States, for the payment of which well and truly to be made, said company and said sureties hereby bind themselves, their successors, heirs, representatives and assigns firmly by these presents.

Dated, signed, sealed and delivered this 29th day of December, A. D. 1865.

Provided, however, and this bond is upon the condition following, that is to say: That if the said Milwaukee and Minnesota Railroad Company shall well and truly pay to Sebra Howard and Selah Chamberlain, or to the owner

or owners of certain judgments heretofore recovered in the District Court of of the United States for the District of Wisconsin, or in any other Court whatever, in favor of said Howard and said Chamberlain, or either of them, or both of them, against the La Crosse & Milwaukee Railroad Company, all such sums of money as may come into the hands of said Milwaukee & Minnesota Railroad Company, which shall hereafter be found to be rightly applicable to the payment of their claims, or the claim of either of them, if they shall be established as liens upon the railroad owned by the Milwaukee and Minnesota Railroad Company, being the railroad from Milwaukee to Portage, in the State of Wisconsin, according to the true intent and meaning of the order of this Court, made in this cause in this behalf, on the 18th day of July, A. D. 1865, then this bond to be void, otherwise in full force and virtue.

Dated, signed, sealed and delivered the day and year first above written.

THE MILWAUKEE AND MINNESOTA R. R. Co.

[SEAL] By A. C. GUNNISON, President.
WM. R. GRIFFITH, [L. S.]
A. FLEMING, [L. S.]
A. C GUNNISON, [L. S.]

UNITED STATES OF AMERICA, } ss.
Southern District of New York. }

William R. Griffith, Albert C. Gunnison and Alexander Fleming, being duly sworn on oath, says, each for himself, that he is worth the sum of fifty thousand dollars over and above all liabilities and exemptions of property from sale on executions.

WM. R. GRIFFITH,
A. FLEMING,
A. C. GUNNISON.

Subscribed and sworn to before me this second day of January, A. D 1866, as witness the seal. [5 ct. R. S., canc'd.]

(Signed) JOHN A. OSBORN,
[L. S.] U. S. Commissioner, Southern District of New York.

UNITED STATES OF AMERICA, } ss.
Southern District of New York. }

I, Kenneth G. White, clerk of the Circuit Court of the United States of America, for the Southern District of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of John A. Osborn, whose name is subscribed to the annexed jurat to bond, and that the signature to the same is in his proper handwriting. And I do further certify, that he was, at the time of signing the same, a United States Commissioner, duly appointed by the Circuit Court of the United States of America for the Southern District of New York, second circuit.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said Circuit Court, this second day of January, in the year of our Lord one thousand eight hundred and sixty six, and of the independence of these United States the ninetieth.

[L. S.] KENNETH G. WHITE.
[5 ct R. S., canc'd.] Clerk.

DISTRICT OF WISCONSIN, ss.—I hereby approve this bond and the sureties thereto this 9th day of January, A. D. 1866.

A. SCOTT SLOAN,
Clerk U. S. Circuit Court, Dist. Wis.

CIRCUIT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF WISCONSIN.—IN EQUITY.

James T. Soutter, survivor, &c., complainant,

vs.

The La Crosse & Milwaukee Railroad Company, The Milwaukee & Minnesota Railroad Company and others.

Know all men by these presents, That the Milwaukee & Minnesota Railroad Company, as principal, and William R. Griffith, Albert C. Gunnison and Alexander Fleming, as sureties, are held and firmly bound unto Hans Crocker, receiver in the above entitled cause, in the penal sum of twenty thousand dollars, for the payment of which well and truly to be made, the said company and said sureties hereby bind themselves, their successors, heirs and representatives firmly by these presents.

Signed, sealed and delivered this 29th day of December, A. D. 1865.

Provided, however, this bond is given upon the express condition, that if said Milwaukee and Minnesota Railroad Company shall well and truly, fully and entirely indemnify the said Hans Crocker from and against all contingent liability mentioned in the report of H. L. Palmer, Esq., auditor in this cause, and from all cost, expenses and trouble in any and every way arising or resulting therefrom, then this bond shall be null and void otherwise of full force, virtue and effect.

Signed, sealed and delivered the day and year above written.

THE MILWAUKEE AND MINNESOTA R. R. Co.,
[L. S.] By A. C. GUNNISON, President.
WM. R. GRIFFITH, [L. S.]
A. FLEMING, [L. S.]
A. C. GUNNISON, [L. S.]

UNITED STATES OF AMERICA, } ss.
Southern District of New York. }

William R. Griffith, Albert C. Gunnison and Alexander Fleming being duly sworn on oath, says, each for himself, that he is worth the sum of forty thousand dollars over and and above all liabilities and exemptions of property for sale on execution.

WM. R. GRIFFITH,
A. FLEMING,
A. C. GUNNISON,

Subscribed and sworn before me this second day of January, A. D. 1866, as witness the seal. [5 ct. R. S., canc'd]

JOHN A. OSBORN,
[L. S.] U. S. Commissioner for the Southern Dist. of N. Y.

UNITED STATES OF AMERICA, } ss.
Southern District of New York. }

I, Kenneth G. White, clerk of the Circuit Court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of John A. Osborn, whose name is subscribed to the annexed jurat to bond, and that the signa-

ture to the same is in his proper handwriting. And I do further certify, that he was, at the time of signing the same, a United States Commissioner, duly appointed by the Circuit Court of the United States of America, for the southern district of New York, second circuit.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said circuit court, this second day of January, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of these United States the nientieth.

[L. S.] KENNETH G. WHITE,
[5 ct. R. S. canc'd.] Clerk.

DISTRICT OF WISCONSIN, ss.—I hereby approve this bond this 9th day of January, A. D. 1866, and the sureties thereto.

A. SCOTT SLOAN,
Clerk U. S. Circuit Court, Dist. of Wis.

UNITED STATES OF AMERICA, } ss.
District of Wisconsin. }

I, A. Scott Sloan, clerk of the circuit court of the United States, for the District of Wisconsin, hereby certify that the above and foregoing are true copies of an order made by said court, on the day and in the cause on which it purports to have been made, and of two bonds filed this day by the Milwaukee and Minnesota railroad company in my office and duly approved by me this day.

I further certify that the Milwaukee and Minnesota railroad company has paid to me, in lawful money of the United States, the full amount, together with all interest, cost and expenses, as provided by said order to entitle that company to the possession of the railroad, rolling stock, and other things mentioned in said order, in that behalf.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of said Court at Milwaukee, this 26th day of January, A. D. 1866, and of the independence of the United States the ninetieth.

{ Seal of the Circuit Court of the U. S. Dist of Wisconsin. }

A. SCOTT SLOAN, Clerk.
By JAMES MCFARLIN, Deputy.

]5 ct. R. S. canc'd.]

OFFICE OF THE RECEIVER OF THE LA CROSSE & MILWAUKEE R. R. CO.

Milwaukee, Jan. 19th, 1866.

To Whom it may Concern:

I have this day, by order of the circuit court of the United States, for the District of Wisconsin, delivered possession of the so-called Eastern Division of this road to the Milwaukee and Minnesota railroad company.

All operating expenses, since the 9th inst., will be paid by said company.

H. CROCKER,
Receiver, &c.

At a meeting of the directors of the Milwaukee and Minnesota railroad company held December 30th, 1865:

On motion of Thomas A. Scott, it was

Resolved, That Alexander Fleming, Vice-President of this company, be authorized and empowered in the name of this company to demand and receive from Hans Crocker, receiver of the circuit court of the United States for the District of Wisconsin, in equity in certain causes therein pending, and from the Milwaukee and St. Paul railway company, possession of the railroad

and rolling stock, and all other things belonging to the Milwaukee and Minnesota railroad company.

{Seal of the Milwaukee and Minnesota railroad company.}

I certify that the foregoing is a true copy from the minutes of the company.

HENRY M. ALEXANDER,
President.

CIRCUIT COURT OF THE UNITED STATES.

FOR THE DISTRICT OF WISCONSIN.—IN EQUITY.

James T. Soutter, survivor, &c.,

vs.

The La Crosse & Milwaukee railroad company, The Milwaukee & Minnesota railroad company and others.

To the Milwaukee and St. Paul railway company, its officers, directors, agents and employees, and each and every one of them and to Alexander Mitchell President of said company, N. A. Cowdrey, Horace Galpin, David M. Hughes, William Gould, Frederic P. James, George Smith, Asahel Finch, jr, William H. White, Russell Sage, George W. Rogers, Selah Chamberlain, S S. Merrill, John W. Cary, Walter S. Gurnee, Washington Hunt, ——— Wesley, Daniel Wells, jr., A. Reasoner, Alanson Cary, secretary of said company, S. W. Crippen, Frank Lyman, Westley Todd, O. F. Willis, W. L. Mead, S. M. Green, Charles Phillips, James Kindling, Uriah Reynolds, Scott Dimick, Henry More, D. W. Heading, C. Renous, D. Willey, E. Crippen, James Little, sr., H. Sage, S. Ellis, M. Coffin, S. Anderson, L. M. Follett, F. Toucey, A. Peek, J. Morrison, S. Sleeper, W. F. Fuller, M. Farrar, O. Huchinson, Ham Grace, John Hodges, J. Patter, E. Wagner, R. Grace, P. Blackwell, H. E. Emerson, F. V. Finch, W. E. Kittridge, Geo. Huntington, L. B. Abbott, P. Lyons, T. B. Livingston, H. C. Robinson, C. A. Brickell, C. W. Snow, R. Laferty, A. Wagerner, Wm Bloomfield, Frank Keiting, J. Johnson, Wm Caton, O. Warriner, Geo. Thompson, P. Plumb, C. E. Page, J. Sargent, M. Kelley, G. Gould, E. Fox, W. McCurdy, C. Williams, O. Blanchard, C. J. Hoxey, C. Eales, J. McSorley, P. Melaney, Wm, McIntosh, Wm. Ferguson, Geo. Howard, A. Jones, A. Downer, J. Donahugh, R. Tupper, J. Ryan, E. Colton, J. Little, C. Hardier, Sam. Reed, Jas. Little, jr., J. Jones, J. Williams, J. Moran, F. V. Finch, jr., Aug. Ruch, P. McSorley, J. Norris, C. C. Chadwick, P. New, C. Magatt, E. Colton, Wm. Brown, Thomas Donahugh, Patrick Grace, J. Brooks, A. Fischback, George Wells, J. Mackey, A. C. Kenniston, ——— Hall, William Cosegrove, D. M. Christy.

PLEASE TAKE NOTICE that the papers herewith served, are certified copies of a certain order of said court, in the above entitled cause, and copies of the two bonds, duly approved by the clerk of said court, which have been filed in the office of said clerk, in this cause, by the Milwaukee and Minnesota railroad company, and in pursuance of and in compliance with said order; and also a copy of a paper executed by Hans Crocker, Esq, receiver of said court; and also a copy of a resolution of the board of directors of the Milwaukee and Minnesota railroad company, empowering Alexander Fleming, Vice-President of said company, to receive the property mentioned in said order

You will further take notice that the said Milwaukee and Minnesota rail-

road company, now and hereby demands that you deliver to the said Fleming possession of any and all of the rolling stock and other property mentioned in said order. now in your possession or under your control, or in the possession or under the control of each and every one of you, according to the exigency, direceion and command of said order.

You and each of you will further take notice that for any failure on your part, or on the part of any one or more of you to comply with the terms of said order and this demand, you and each and every one of you will be proceeded against for contempt of said court; and that each and every one of you will be held liable severally and individually for the value of any property in your hands, and for damages for detaining the same and otherwise.

Dated February 10th, 1866.

THE MILWAUKEE AND MINNESOTA R. R. Co.

By ALEXANDER FLEMING, Vice-President.

MATT. H. CARPENTER, Solicitor.

EXHIBIT "B."

CORRESPONDENCE

BETWEEN THE

Milwaukee and Minnesota Railroad Company,

AND THE

Milwaukee and St. Paul Railway Company,

AS TO THE REFUSAL OF THE LATTER COMPANY TO DELIVER POSSESSION OF ROLLING STOCK, UNDER ORDER OF THE U. S. CIRCUIT COURT.

OFFICE OF THE MILWAUKEE AND ST. PAUL RAILWAY COMPANY.

MILWAUKEE, JANUARY 29TH, 1866.

To the Milwaukee and Minnesota Railroad Company:

Your printed demand upon this Company for the delivery to A. Fleming of all the rolling stock mentioned in the order of July 18th, 1865, entered in the case of James T. Soutter, survivor, vs. La Crosse and Milwaukee Railroad Company and others. in the Circuit Conrt of the United States for the District of Wisconsin, is this day received.

The rolling stock mentioned in said order purchased by the Receiver, consisting of eight (8) locomotives, two (2) passenger cars, one (1) baggage car, six (6) caboose cars, and one hundred and thirty-four (134) house freight cars has never been divided, but since the first day of May, 1864, has been in the joint possession of the Receiver and of this Company, and is owned jointly by this Company and the Eastern Division of said La Crosse and Milwaukee Railroad.

The order of July 18th, 1865, requires the Receiver to deliver a certain undivided proportion of said rolling stock to you, but provides no way or means of making a division, or specifying the particular locomotives or cars to be delivered.

A portion of this stock has already been delivered to you by the Receiver, to wit, three (3) locomotives and a large number of cars. One of the locomotives is now at Portage, subject to the order of the Receiver, and the remaining four (4) are in our shops at Watertown, undergoing repairs. Two of them will be at Portage this week, under the control of the Receiver, and the cars on our line are being collected as rapidly as possible at Portage, so that the proportion belonging to the Eastern Division may be delivered by the Receiver.

In order to enable the Receiver to deliver to you in severalty the proportion of said rolling stock belonging to the Eastern Division, we have proposed to him a division thereof, subject to future review and correction by the Court, or by the agreement of parties interested; and are ready to co-operate with him in making a fair and equitable division thereof.

We claim no interest in or control over the proportion of rolling stock purchased by the Eastern Division, and will unite with the Receiver in making a division of the stock so purchased, and furnish him every facility in our power, when divided, to make an immediate delivery thereof to you.

The rolling stock which was on the road June 11th, 1860, of which the Receiver took possession, was, by the order of the District Court, made on the 12th day of June, 1863, in the land grant foreclosure suit, taken from the Receiver and delivered to this company as purchaser thereof under the land grant decree, and the Receiver was as to said property discharged; since which time this company has been in the exclusive possessions thereof. The title of this stock is now in litigation between this Company and you; which litigation is not yet determined. No order has been entered therein, disturbing our possession. Whenever the Court shall have disposed of the questions there raised, and settled the title and ownership of said stock, we shall cheerfully conform to its decision.

In the meantime, we would avoid so far as possible any inconvenience to the public or injury to you arising therefrom. We shall, therefore, furnish to you, of said stock, sufficient to enable you, with your preportion of that purchased by the Receiver, to operate your road.

To that end we have already delivered to you, as of our own property, nine (9) of said locomotives, together with passenger, mail, baggage and freight cars, which are now in your possession; and should the stock already furnished you by us, together with the proportion of that purchased by the Receiver belonging to you, prove insufficient to operate your road, we will furnish, in addition of said original stock, an ample and more than sufficient quantity for that purpose, and in case of a difference of opinion on the subject, we will submit to the decision of any suitable and impartial umpire you may name.

Further than this we do not propose to deliver to you any part or portion of said rolling stock so on said road on the 11th day of June, 1860, but claim the same as of right and legally and properly in our possession and under our control, and we are advised that the course above indicated is practically a full and complete compliance with said order of July 18th, 1865, so far as the same is obligatory or binding upon us.

Respectfully yours,

S. S. MERRILL,

General Manager.

MILWAUKEE, JANUARY 31ST, 1866

To the Milwaukee and St. Paul Railway Company, its officers, directors, agents and employees, and each and every one of them, and to Alexander Mitchel, President of said Company, N. A. Cowdrey, Horace Galpin, David M. Hughes, William Gould, Frederic P. James, George Smith, Asahel Finch, jr., William H. White, Russell Sage, George W. Rogers, Selah Chamberlain, S. S. Merrill, John W. Cary, Walter S Gurnee, Washington Hunt, ——— Wesley, Daniel Wells, jr., A. Reasoner, Alanson Cary, Secretary of said Company, J. W. Crippen, Frank Lyman, Westley Todd, O. F. Willis, W. L. Mead, S. M. Green, Charles Phillipps, James Kindling, C. Renous, D. Willey, E. Crippen, James Little, jr., H. Sage, J. Ellis, M. Coffin, J. Anderson, A. Peck, S. Sleeper, M. Farrar, O. Hutchinson, Ham Grace, John Hodges, J. Patter, E. Wagner, R. Grace, P. Blackwell, H. E. Emerson, F. V. Finch, W. E. Kittridge, Geo. Huntington, L. B. Abbott, P. Lyons, T. B. Livingston, H. C. Robinson, C. A. Brickell, C. W. Snow, R Laferty, A. Wagerner, Wm Bloomfield. Frank Keiting, J, Johnson, Wm. Caton, O. Warriner, Geo. Thompson, P. Plumb, C. P. Page. J. Sergeant, M. Kelley, G. Gould, E. Fox. W. McCurday, C. Williams, O Blanchard, C. J. Hoxey, C. Eales, J. McSorley, P. Melaney, Wm. McIntosch, Wm. Ferguson, Geo Howard, A. Jones. A. Downer, J. Donahugh, R. Tupper, J. Ryan, E. Colton, J. Little, C. Hardier, Sam. Reed, Jas. Little, jr., J. Jones, J. Williams, J. Moran, F. V. Finch, jr, Aug. Ruch, P. McSorley, J. Norris, C. C. Chadwick, P New, C. Magatt, E. Colton, Wm. Brown, Thos. Donahugh, Patrick Grace, J. Brooks, A. Fischback George Wells, J. Makey, A. C. Kenniston, ——— Hall, D. M. Christy, W. P. Cosgrave:

Gentlemen:

In reply to the demand her tofore made on you by the Milwaukee and Minnesota Railroad Company, that you, and each and every one of you, comply with a certain order of Court therein named, the Milwaukee and Minnesota Railroad Company has just received a letter from S. S. Merrill, Manager of the Milwaukee and St. Paul Company, of which the foregoing is a copy.

As to the rolling stock purchased by the Receiver, this Company has requested the Receiver to proceed at once and deliver to this company such proportion thereof as it is entitled to under the order of the Court, and will attend said Receiver at any time and place to be named by him to receive the same.

As to the rolling stock on the La Crosse and Milwaukee Railroad when the Receicer was appointed, except the forty box cars, the letter of your Manager, just received, informs this Company you do not intend to deliver it.

It is not supposed that your counsel need any instruction upon this subject, nor is it expected that this letter will produce any practical result, if you are disposed to resist the authority of the Court. But being instructed by the Minnesota Company to take the proper steps to hold the officers, directors and agents of the St. Paul Company liable personally for the consequences of this contempt of the Court; and as many of those officers are gentlemen with whom I have always been on friendly relations socially, I have resolved to lay before them the facts in the case as they appear of record; and then if they choose to disobey the order of the Court, the consequences will be upon them

The Eastern Division of the road was first mortgaged, and the mortgage conveyed the road from Milwaukee to Portage, together with the rolling stock and franchises pertaining thereto, between the limits aforesaid; but did

not specify the amount of rolling stock intended to be conveyed by the mortgage.

The Western Division was mortgaged in the same way.

Subsequently the whole road, and all its rolling stock, property and franchises, were mortgaged to Barnes, and on the foreclosure of that mortgage in May, 1859, passed to the Milwaukee and Minnesota Company. This has been so decided by the Supreme Court of the United States. 2 Wallace 304. Thereby the Minnesota Company became the successor of the old La Crosse Company, and the owner of the road, property and franchises, subject to prior legal liens.

Subsequently a suit was commenced in the United States Court to foreclose the Western Division mortgage, and another was afterwards commenced in same court to foreclose a mortgage on the Western Division. As each of these suits was distinct from the other, and each was commenced to foreclose a particular mortgage; one of which mortgages covered the Eastern Division with its rolling stock, and the other, the Western Division, with its rolling stock, and as neither mortgage specified how much of the whole rolling stock was covered by it, of course it was necessary for the court to ascertain this by proceedings to that end.

For that purpose the court made an order of reference in each of these cases, among other things as follows:

WESTERN DIV. CAUSE.

"And it is further ordered that the said masters ascertain and report the whole amount of rolling stock on the road, and that they specify the quantity thereof that is covered by and included in this mortgage, and also in the first and second mortgages respectively."

EASTERN DIV. CAUSE.

"And it is further ordered by the court that the said masters ascertain and report the whole amount of rolling stock on the whole road, and that the specify the quantity thereof *that is covered by and included in* the first mortgage, and also in this mortgage and the mortgage of Greene C. Bronson, James T Soutter, and Shepherd Knapp"

The masters made their report as follows:

WESTERN DIV. CAUSE.

"We have also ascertained the whole amount of rolling stock on the whole road at the cost price. The amount thereof was, at the date of the filing of the bill of complaint in this cause, five hundred and sixty-nine thousand six hundred and thirty-five dollars and seventy-eight cents, and an additional amount of fifty-three thousand six hundred dollars has been purchased since the filing of the bill of complaint, making the whole amount to $623,235.78

"And we have ascertained, and do further report that of the said rolling stock, forty box cars, amounting at the cost price thereof at thirty-one thousand nine hundred and seventy-nine dollars and sixty-four cents and numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376 378, 380, 382, 384, 386, 388, 390 392 394, 396, 398, 400, 402, 404 406, and 408, are covered by and included in the mortgage executed to the complainants as set forth in the bill of complaint, in this cause, the said cars

EASTERN DIV. CAUSE.

"We have also ascertained the whole amount of rolling stock on the whole road. The amount thereof, at the cost price, was at the date of filing the bill of complaint in this cause, five hundred sixty-nine thousand six hundred and thirty-five dollars and seventy-eight cents And an additional amount of fifty-three thousand six hundred dollars has been purchased since the filing of the bill of complaint, making the whole amount now on the road six hundred twenty-three thousand two hundred thirty-five dollars and seventy-eight cents ($623,235.78).

"And we have ascertained, and do further report, that of the said rolling stock, forty box cars, amounting, at the cost price thereof, to thirty-one thousand nine hundred and seventy-nine dollars and sixty-four cents, ($31,979 64) and numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352 354 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 888, 390, 392, 394, 396, 398, 400, 402, 404, 406, and 408, are

"having been purchased by the proceeds "of a portion of the bonds to which this "mortgage is collateral, and all the re- "mainder of the said rolling stock is "covered by and included in the first "mortgage upon the said railroad, and "in the mortgage upon the said railroad "executed to Greene C. Bronson and "James T. Soutter, and bearing date on "the seventeenth day of August, A. D. "1857.—Record, 72.

"covered by and included in the mort- "gage of Greene C. Bronson, James T. "Soutter, and Shepherd Knapp, and no "other. And all the remainder of the "said rolling stock is covered by and "included in the first mortgage upon the "said railroad, and in the complainant's "mortgage specified in the bill of com- "plaint —Record, 90.

This report, which gave to the Western Division but forty box cars, was excepted to by Mr Carey f r the complainants in that cause, upon the ground that it ought to have given all; and was excepted to by Mr. James S, Brown, in the Eastern Division cause, because it ought not to have given the Western Division any of the rolling stock, *not even the forty box cars.* But the Court overruled all these exceptions, and made its degree in the Western Division cause for the sale of that division and said forty car.

The complainants in the Western Division cause proceeded to execute the decree by a sale, and the Milwaukee and St Paul Company claims to have become the purcha-er of what was sold at that sale. This is the title, and the only title of the Company to any part of the road or franchises of the old La Crosse Company.

The premises of the Eastern Division mortgage, viz., the road from Milwaukee to Portage and all the rolling stock, except the forty box cars, was, of course, in no way affected by the sale of the Western Division and the forty cars

At the July session, 1865, of the United States Court, an order was made on a mandate from the Supreme Court of the United States, among other things as follows:

"On motion of Matt. H. Carpenter, Solicitor of the Milwaukee and "Minnesota Railroad Company, one of the defendants in this cause. And "on the mandate of the Supreme Court of the United States in this cause.

"Ordered that the whole amount due the complainants in this cause, and "to become due before the day of sale of the mortgaged premises are estima d "as now appears to be as follows, viz.:

"Amount fixed by order of decree *nisi*, $405,290.05, together with "interest thereon since September 27, 1864. Coupons due March 1. 1865, "$40,000, with interest thereon since that date. Coupons to become "due September 1, 1865, $40,000, with interest thereon from that date. "Expenses, counsel fee, etc., allowed at $35,796.33, with interest thereon "from that day.

"Ordered further, that in case said Milwaukee and Minnesota Railroad "Company shall, before a sale of the mortgaged premises in this cause, pay to "the clerk of this court for the complainant in this cause the several sums "above mentioned, with interest thereon as aforesaid, to the day of such "payment, and the costs in this cause to be taxed; that upon such payment "the said Receiver, Hans Crocker, and the said Milwaukee and St. Paul Rail- "way Company, its officers, directors, agents and employees, deliver over to "said Milwaukee and Minnesota Railroad Company, the Eastern Division, "so called, of the La Crosse and Milwaukee Railroad, so called, from Mil- "waukee to Portage, together with all the rolling stock that was on the whole "of the La Crosse and Milwaukee Railroad, or belonged or appertained "thereto when the said Receiver was appointed, except forty box cars, num- "bered as follows, to wit: 330, 332, 334, 336, 338, 340, 342, 344, 346, "348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, "376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404,

"406, 408, and also deliver to said Milwaukee and Minnesota Railroad Com-
"pany such proportion of the rolling stock that was purchased by the
"Receiver as 121,178 dollars bears to 26,199 dollars, together with all the
"rights, privileges and franchises and personal and other property belonging,
"or in wise appertaining, to said railroad from Milwaukee to Portage, and
"that the said Receiver be thereafter dismissed and discharged except for
"the purpose of passing his accounts."

This order has been fully complied with by the Minnesota Company, nearly half a million of dollars have been paid into court, bonds have been filed, approved, and the Minnesota thereupon became entitled to possession under the order, and the Receiver has actually surrendered the Eastern Division.

The Minnesota Company, thereupon served upon your company a certified copy of the order, the bonds filed, and a certificate of the clerk of the court that the order has been fully complied with and notice of the surrender of the Eastern Division by the Receiver; and demanded of your company, and of its officers, directors and agents by name, a surrender of the rolling stock under the order of the court.

The letter before me is understood to be the refusal of your company to comply with that order.

The reason you assign is, that you claim to be the owner not only of the forty box cars, sold to you at the foreclosure sale, but also of the rolling stock which the court adjudged was not covered by your mortgage, and refused to sell to you; and you assert that the court delivered possession of this rolling stock to you as purchaser under the Western Division foreclosure sale.

To show you how unfounded is this claim, and how untrue is the basis upon which it rests, I ask your attention to the facts as they appear of record

I have already shown you, that for the purpose of ascertaining what rolling stock was covered by the land grant mortgage, in other words belonged to the Western Division, the court made an order of reference, the masters reported only forty box cars, your counsel excepted to the report on that ground, and the court overruled the exception; and that the decree directed the sale of the forty box only. The order under which you obtained possession as purchaser was as follows:

"Whereupon it is ordered by the court (Mr. Carpenter in behalf of the
"Milwaukee and Minnesota Railroad Company, and Mr. Ryan in behalf of
"William Crawshay and Orville Oddie objecting) that the Receiver deliver
"over to the said Milwaukee and St. Paul Railway Company, the said rail-
"road and appurtenances between Portage City and La Crosse, *and the*
"*rolling stock and property specially described in the decree.*

"And it is further ordered by the court, that a full and perfect inventory
"be taken by the Receiver of all the rolling stock *other than the forty box*
"*cars specially mentioned in the decree:* and of all personal property
"belonging to the said La Crosse and Milwaukee Railroad Company, including
"such as have been procured by the Receiver and now on hand; and that
"he make report of the same on the eighth day of June next."

"And as in pursuance of the act incorporating the La Crosse and Milwau-
"kee Railroad Company, *a continuous road has been constructed and*
"*operated between La Crosse and Milwaukee, and the interest of the*
"*public requiring that the said road, as constructed and operated, shall*
"*continue to be so operated, it is ordered by the court,* (reserving the right
"to rescind, change or modify this order at any time hereafter) that the
"said Milwaukee and St. Paul Railway Company, and the Receiver who
"continues to be the Receiver of the Eastern end or division of said La Crosse

"and Milwaukee Railroad between Milwaukee and Portage City, jointly "operate said road between La Crosse and Milwaukee without interruption. "and that the said Milwaukee and St. Paul Railway Company, and the said "Receiver, jointly, employ all the agents and persons necessary for the "proper operating of said road; that the revenues of said road be paid to the "Receiver as heretofore, who shall keep all accounts and books for the "inspection of the said company, and said company may keep duplicate "books, and that all payments and disbursements for necessary expenses in "operating said road shall be paid out of the joint fund, each division of "said road to be entitled to its proportion of revenue, and to be charged "with its proportion of disbursements, and that the said Receiver pay cou- "pons of bonds on prior mortgages as heretofore."

You will see from reading this order that, as purchaser, you obtained possession of only the rolling stock and property specially mentioned in the decree, that is, the forty box cars.

But for the purpose of keeping the road entire as it was chartered, the Receiver and your company was authorized to operate the whole road, including the Eastern Division and all the rolling stock except the forty cars, jointly:

Afterwards, on the 12th of June, the court, for the purpose of more completely securing the operation of the whole road, as an entire, continuous road under the charter, made two orders as follows:

WESTERN DIVISION CAUSE.

"On consideration of said petition "of the Milwaukee and St. Paul Railway "Company, and of the arguments of coun- "sel, it is ordered by the court that there "be delivered over to the said Milwaukee "and St. Paul Railway Co. all and singu- "lar the railroad between the city of La "Crosse and Portage City, its roadbed and "track, with its depots, station houses, "engine houses, and all other property "belonging to said railroad between the "said points; and the forty box cars men- "tioned and described in the decree.

"And also the share or proportion of the "rolling stock and property purchased by "the Receiver, as mentioned in the de- "cree.

"And also *subject to other or previous "liens or claims*, possession of the roll- "ing stock on hand when the Receiver "took the same under the order of the "court. And it is further ordered by the "court, that the said Receiver be and "hereby is discharged as such from the "management and control of the said "Western Division of said railroad under "the appointment in this case, subject, "however, to the final settlement of his "accounts, *and subject to the orders* made "or to be made in this case and in the "other cases in which he was appointed "or may hereafter be appointed."

EASTERN DIVISION CAUSE.

After reciting the petition of the St. Paul Co., &c., &c

"It is thereupon ordered by the court "that the order appointing a Receiver in "this case be modified in the manner fol- "lowing, *subject to any further or other or- "der rescinding altering or modifying this "order now here made:* That the Receiver "let the said Milwaukee and St. Paul "Railway Co into the possession of the "Eastern Division of the La Crosse and "Milwaukee Railroad from Portage City "to Milwaukee, with the appurtenances "and property and rolling stock thereto "belonging. And that the said Milwau- "kee and St. Paul Railway Co., subject "to further order or orders of the said "court, operate said Eastern Division of "said railroad in connection with the said "Western Division thereof, so that one "continuous line of railroad between La "Crosse and Milwaukee may be operated "and conducted as directed in the origi- "nal charter of the La Crosse and Mil- "waukee Railroad Co.: without hinder- "ance, interruption or diversion, the same "as if the whole line of road continued to "be in one company in pursuance of said "charter, and not otherwise.

"And it is further ordered by the court "that the said Milwaukee and St. Paul "Railway Co. shall at all times allow and "permit the Receiver or such other per- "sons as may be at any time appointed for "that purpose, to have daily access and "examinations of the records, books, pa- "pers, accounts, proceedings, receipts "and revenues, and also of the transac- "tions of the said Milwaukee and St. "Paul Railway Co., and of its Board of

"Directors. in relation to the business
"and operation of the whole line of road,
"and that the said railway company shall,
"out of the revenues of said road. *keep*
"*the said Eastern Division and all the roll-*
"*ing stock in good order*, and defray all
"running and other necessary expenses,
"and at the end of every month deliver
"to the said Receiver. or such other per-
"son as may be appointed a full and de-
"tailed account of all revenues arising on
"the whole road, and of all necessary dis-
"bursements out of the same, and pay
"over monthly to the Receiver the pro-
"portion of the said Eastern Division of
"the net revenues of the said railroad.
"And that the said Receiver make month-
"ly returns as heretofore, of his accounts
"into court. and disburse the moneys by
"him received from time to time in the
"payment of liens and debts of the said
"La Crosse and Milwaukee Railroad Co.;
"according to their priorities and equities.
"And it is further ordered by the court,
"that before the said Milwaukee and St.
"Paul Railway Co be permitted to have
"possession under this order, the said
"company, by its constituted officers,
"shall enter into bond to the United States,
"for the use and benefit of all interested.
"with sureties to be approved by the court.
"in the penalty of one hundred thousand
"dollars, conditioned that the said com-
"pany will faithfully comply with this
"order of court this day made and any
"subsequent orders relating to the opera-
"tion and management of said railroad be-
"tween La Crosse and Milwaukee and will
"keep said road and the rolling stock and
"property in good order, and shall manage
"and conduct the same to the best advan-
"tage of the public and the La Crosse and
"Milwaukee Railroad Company, and shall
"make monthly returns and pay over the
"net revenues of said road, according to
"this order."

The order in the Western Division cause deserves particular attention. It orders the Receiver:

(1.) To deliver to the St. Paul Company full possession of the Western Division, "*and the forty box cars mentioned and described in the decree.*"

(2.) To deliver also full possession of the "share or proportion of the rolling stock and personal property purchased by the Receiver, *as mentioned in the degree;* thus terminating the joint occupancy with the Receiver with which that possession had been burdened by the order of May 7.

So far, the order is absolute; and shows by the repetition of the words at the end of each clause, "*mentioned and described in the decree,*" that the court was delivering possession of what the St. Paul Company had *acquired title to* by its purchase under the decree.

Then the order proceeds to direct the Receiver to deliver also, subject however to all "OTHER or *previous liens* or CLAIMS, the whole rolling stock on hand when he was appointed, that is, the remainder of the rolling stock, except the forty box cars, which belonged to the Eastern Division, and

of course *was not mentioned and described in the land grant decree*, therefore this clause is not followed, as the others are, by the words, "*mentioned and described in the decree.*"

Considering the careful and guarded language of this order, it is impossible not to see that the court was drawing the distinction, in what it ordered to be delivered to the St. Paul Company, between that which belonged to them by their purchase under the decree : that this Western Division, the forty box cars, and the proportion of rolling stock purchased by the Receiver ; and that which was delivered to them temporarily, but *not by virtue* of their purchase *under the decree.*

The court in substance said—"take absolutely all that was purchased by you under the decree—the Western Division, forty box cars, and the proportion of rolling stock purchased by the Receiver ; this you have purchased. The remainder of the said rolling stock has been ascertained to belong to the Eastern Division, and it must there remain ; but we give it, *with the Eastern Division*, into your possession temporarily ; that the whole may be operated together."

2. Turn now to the order in the Eastern Division cause. The court had decided that all the rolling stock, except forty box cars, was included in the Eastern Division first mortgage : that is, that it belonged to the railroad *between the limits of Milwaukee and Portage ;* because such is the description in that mortgage. The court had determined for reasons of public policy, etc , set forth in the preamble to this order, to give to the St. Paul Company the possession of the Eastern Division mortgage premises, temporarily. This order gives to the St. Paul Company the possession of the Eastern Division "*and rolling stock thereto belonging,*" but subject nevertheless "*to any further or other order, rescinding, altering or modifying this order now here made.*"

How absurd to pretend that the court in this order regarded the rolling stock pertaining to the Eastern Division, as having been purchased by the St. Paul Company. Did a court ever yet put a purchaser into possession after final decree and confirmation of sale, "*subject to any further order rescinding*" *the same?* This right reserved to the court to *rescind* the order giving the St. Paul Company the Eastern Division "and the rolling stock belonging thereto," is conclusive that the court was granting to that Company a *favor*, and not a *right ;* a temporary possession, not a title.

Under these orders, and as a condition to obtaining possession of the Eastern Division and its rolling stock, your company gave a bond, as follows, which will probably become matter of interest to its signers at no very distant day :

"Know all men by these presents, that the Milwaukee and St. Paul Rail-
"way Company, as principal, and David M. Hughes, Alexander Mitchell,
"Russell Sage, Fred. P. James, N. A. Cowdrey, Horace Galpin, William
"H. White, George W. Rogers, Selah Chamberlain, and Asahel Finch, as
"sureties, are held and firmly bound unto the United States of America, for
"the use and benefit of all interested herein, in the penal sum of one hun-
"dred thousand dollars, lawful money of the United States of America, to
"be paid to the said obligee, its assigns, or any party interested herein, to
"which payment, well and truly to be made to the said obligee, the said
"obligors bind themselves, their heirs, executors, administrators, and assigns
"firmly, by these presents,

"Sealed with our seals and dated this twelfth day of June, in the year
"one thousand eight hundred and sixty-three.

"The condition of this obligation is such, that whereas the District Court

"of the United States for the District of Wisconsin, in a certain case there-
"in pending, wherein Greene C. Bronson, James T. Soutter and Shepherd
"Knapp are complainants, and the La Crosse and Milwaukee Railroad Com-
"pany and others are defandants, made a certain order bearing date on the
"twelfth day of June. A. D. 1863, directing the Receiver to let the said
"Milwaukee and St. Paul Railway Company into possession of the Eastern
"Division of La Crosse and Milwaukee Railroad, between Portage City and
"Milwaukee, with its appurtenances, property, *and rolling stock belonging*
"*thereto*, and directing said Milwaukee and St. Paul Railway Company, sub-
"ject to the further order or orders of said District Court, to operate said
"Eastern Division of said railroad in connection with the Western Division
"thereof, from Portage City to La Crosse, so that one continuous line of
"railroad between La Crosse and Milwaukee might be operated and conduct-
"ed as directed in the original charter of the La Crosse and Milwaukee
"Railroad Company, without hindrance, interruption, or diversion, the same
"as if the whole line of road continued to be in one company, in pursuance
"of said charter, and not otherwise.

"And further directing that the said Milwaukee and St. Paul Railway
"Company shall, at all times, allow and permit the Receiver, or such other
"persons as may be at any time appointed for that purpose, daily access and
"examination of the records, books, and papers, accounts, proceedings,
"receipts and revenues, and also of the transactions of the said Milwaukee
"and St. Paul Railway Company and of its board of directors in relation to
"the business and operations of the whole line of road, and that the said
"railway company should, out of the revenues of said road, keep the said
"Eastern Division and all the rolling stock in good order, and defray all
"running and other necessary expenses, and at the end of every month de-
"liver to the said Receiver, or such other person as may be appointed, a full
"and detailed account of all revenues arising on the whole road, and of all
"necessary disbursements out of the same, and pay over monthly to the
"Receiver the proportion of the said Eastern Division of net revenues of
"the said board.

"Now, therefore, if the said Milwaukee and St. Paul Railway Company
"shall faithfully comply with said order of said court and all subsequent
"orders relating to the operation and management of the said railroad
"between La Crosse and Milwaukee, and shall keep said road and the rolling
"stock and property in good order, and shall manage and conduct the same
"to the best advantage of the public and the creditors of the La Crosse and
"Milwaukee Railroad Company, and shall make monthly returns, and pay
"over the net revenues according to to the said order, then this obligation
to be null and "void, otherwise to remain in full force and virtue.

"The Milwaukee and St. Paul Company—by its President;

[SEAL.] "D. M. HUGHES, *President*

"D. M. HUGHES, [SEAL.]
"ALEX MITCHELL, [SEAL.]
"GEO. W. ROGERS, [SEAL.]
"F. P. JAMES, [SEAL.]
"N. A. COWDRY, [SEAL.]
"RUSSELL SAGE, [SEAL.]
"SELAH CHAMBERLAIN, [SEAL.]
"HORACE GALPIN, [SEAL.]
"W. H. WHITE, [SEAL.]
"A. FINCH, [SEAL.]

"Signed, sealed and delivered in presence of—
"JOHN W. CARY.

"RUSSELL SAGE, JR., *Secretary*

"June 13, 1863. This bond and the sureties approved by the court.
"A. G. MILLER."

It was under these orders and this bond that you took possession of the rolling stock in question, really as Receiver of the court in the Eastern Division cause, for the purpose of operating the La Crosse road as a *continuous line*, without diversion of travel or business from the Eastern Division at Portage.

In this connection, let me call your attention to extracrts from two opinions of the court, explaining the reason why the order was made giving you possession :

"The only legitimate question before the court in June last, when the "order modifying the action of the Receiver was made, and now, how is the "road to be operated during the pendancy of the appeal, *as an entire road* "*under the grant of the charter*, to the best interests of the parties, the "creditors, and the public? *It was conceded* that the use of the road could "*not to be obstructed at Portage City*, BUT THAT THE CARS MUST BE RUN "THROUGH THE WHOLE LENGTH OF THE ROAD. * * * *
"This order was intended to prevent a diversion of the travel and business "on Western Division from the Eastern, and to save the expense to two sets "of employees, and to prevent interruption of the public."

And again the Judge says in another opinion :

"The first duty of the court is to secure the interests of the public under "the grant of charter to the La Crosse Company. The second duty is to "protect the rights of the lien creditors and the parties litigant The Re- "ceiver was appointed for these two purposes.

"For this purpose the orders of the 12th of June, 1863, in this case and "in the Howard case, modifying the original orders appointing the Receiver, "were made. The Milwaukee and St. Paul Company were allowed by "those last orders to operate temporarily the Eastern Division of the road "*in connection with the Western Division*, of which they were owners for "the sake of economy in operating the road, *to secure the use of all the* "*rolling stock on the whole line, and to restrain the St. Paul Company* "*from diverting trade and travel from the Eastern Division.* It was "known that the St. Paul Company were about to connect their division "from Portage City to the Watertown road, and thence to Milwaukee, "which might affect the Eastern Division.

"The order allowing that company to operate the Eastern Division, sub- "ject to the control of the court and the supervision of the Receiver, and "under heavy bonds with adequate security, *prohibiting them from putting* "*a car on their extension from Porlage or any other road east of that* "*point.* I considered it a proper duty for the public and the parties to se- "cure *the use of a continuous route according to the charter, without inter-* "*ruption or deviation of trade or travel between the termini of the road.*"

You will judge for yourself how faithfully you have executed the spirit of the orders giving you possession of our property, and what are the chances of your liability in your bond.

In the same connection, let me also remind you of a decision of the Supreme Court of the United States, upon this very subject, reported in 2 Wallace 609, in which the court, after an examinatien of the mortgages and a review of the foregoing orders, decide :

(1.) That the land grant mortgage did not cover the rolling stock belonging to the Eastern Division ; and

(2.) If it had done so, the decree of the court, under which alone you can claim title, ordered the sale of only the forty box cars. It was after this decision of the Supreme Court of the United States, *and in pursuance of a mandate from that court* that the Circuit Court ordered you to deliver

up this rolling stock to our company on payment of the money, &c., *which you now refuse to do.*

This decision also sets at rest the pretence now repeated by you, in the letter before me, that you received possession of this rolling stock as purchaser. The court say, 2 Wallace p. 240:

"On the 7th day of May, two days after the order of confirmation, the "Milwaukee and St. Paul Railway Company presented their petition for the "discharge of the Receiver, and for possession of the property which they "had purchased. The court thereupon made an order 'that the Receiver "'deliver over to said Milwaukee and St. Paul Railway Company the said "'road and appurtenances between Portage City and La Crosse, *and the* "'*rolling stock and property specially described in the decree.' The only* "*rolling stock specially described in the decree was the forty box cars,* "*and the proportion of stock purchased by the Receiver.* The fact that "this was ordered to be delivered to the purchasers, *and no more*, is almost "conclusive of two things: first, that the judge understood his decree and "previous rulings as we have interpreted them; and second, *that he had no* "*idea that he had confirmed a sale of all the rolling stock on the road to* "*the purchasers at the sale.* It is true that over a month later he ordered "the Eastern Division of the road *and the remainder of the rolling stock* "into the possession of the same company. *But this was done to enable* "*them to run the whole road as a through route, on the principle of pub-*"*lic policy*, and that it was better for all parties concerned. This he de-"clared in an opinion delivered at the time, and it is substantially indicated "in the orders."

I understood you derive great consolation from the fact that three of the judges dissented from that decision.

But on examining the dissenting opinion you will find that it in no way sustains your pretence of title. The majority of the court held that this rolling stock belonged, in severalty, not to you, but to us; while the minority held that it did not belong to either of us, in severalty, but ought to be operated on the whole road for the benefit of both of us, and all concerned.

Two months after the order of the court requiring your company to deliver to us this rolling stock, as part of the Eastern Division and after the decision of the Supreme Court of the United States, above referred to, your counsel, *Mr. John W. Carey*, assisted Mr. Ogden to obtain a decree in the Eastern Division suit, for the sale of the mortgage premises in that cause; and that decree directs the sale of this rolling stock in the precise language of description employed in the order, as belonging to the Eastern Division. Under this decree the Eastern Division and this rolling stock were advertised for sale, and only saved by the payment by our company of near half a million of dollars as required by that decree.

This shows that your own counsel, Mr. Cary, regards this rolling stock as covered by the mortgage, which only describes rolling stock appurtenant to the Eastern Division, because he knew that the Supreme Court of the United States had decided, in the above mentioned suit between your company and ours, that the mortgage on the Western Division, under which alone you can claim, did not cover the rolling stock belonging to the Eastern Division. The language of the court (2 Wallace, 635) speaking of mortgages on the Eastern and Western Divisions respectively is: "But when we consider it [the descriptive part of the mortgages] in reference to the *clear* purpose of the parties to make the mortgages distinct and different as to everything else conveyed by them, we conclude that it was intended that the *rolling stock* covered by each mortgage *was that which was properly appurtenant to each particular division of the road.*"

From this you will see that Mr. Carey is blowing hot and cold on this question, with a vengeance. In the Eastern Division cause, he claims and obtains a decree for the sale of *all this rolling stock* as part of the *Eastern Division*; but since that sale has been prevented, by our paying the money, he claims that this rolling stock belongs to the Western Division, not to the Eastern.

This is not at all surprising after the former proceedings of your company. Mr. Carey, as your counsel, once obtained possession of the Eastern Division and this rolling stock, for the purpose of carrying out the "public policy of the State," to keep this a continuous line. You now not only seek to defeat this end, but Mr. Carey has signed an opinion denying the power of the Legislature to prevent your doing so.

The Milwaukee and Minnesota Railroad Company, if it hears nothing further from you, will understand the foregoing letter of your manager, as a refusal on the part of the Milwaukee and St. Paul Railway Company to obey the order of the court: and you, and each and every one of you, will be held responsible, not only in your corporate, but in your individual capacity, for damages.

Your letter, by way of adding insult to injury, offers to furnish us sufficient rolling stock to do our business. There is nothing in your past dealings with, or present relations towards our company, that can induce us to believe that you would be willing to do us any favor. This offer is therefore regarded as only an evidence that you know and feel that you are acting in a most high-handed and illegal manner in disobeying the order of the court, and are only desirous of diminishing the damages you know we must ultimately recover against you

You will please take notice, that we demand of you a complete and full performance of the order of the court in this behalf, and do not wish to hire, or rent, borrow, or use, any rolling stock, except that which the order requires you to deliver, and that, and all of it, we claim and demand to be immediately delivered.

In this connection I may say, that the whole rolling stock the order entitles us to is necessary to do the business of our company; and we are desirous of receiving the same immediately, for the purpose of putting it in repair before the commencement of the spring business.

You will therefore please take notice that the Milwaukee and Minnesota Railroad Company demands an immediate compliance with said order, on the part of the Milwaukee and St. Paul Railway Company, and its directors, officers, agents, and employees, and especially of each and every one of you to whom this is directed, it demands such compliance.

MATT. H. CARPENTER,
Solicitor of the Mil. and Minn. R. R. Co.

The Milwaukee and Minnesota R. R. Co.,
By A. FLEMING,
Vice President.

CIRCUIT COURT OF THE UNITED STATES.

FOR THE DISTRICT OF WISCONSIN.—IN EQUITY.

James T. Soutter, survivor, &c.,

vs.

The La Crosse & Milwaukee Railroad Company and others.

UNITED STATES OF AMERICA, Southern District of New York. } ss.

Nicholas Murray being first duly sworn says that at the city and state of New York, he served the foregoing documents hereto attached upon the following named persons at the dates respectively set opposite their names, by delivering to and leaving with each of them a copy of said documents. and exhibiting then and there to each of said persons the said originals hereto attached at the time and as part of said service, viz:

February 14th, 1866, Russell Sage.
" " " D. M. Hughes.
" " " N. A. Cowdrey.
" " " F. P. James.
" 15th " Washington Hunt.
" 16th " Horace Galpin.
March 5th " W. S. Gurnee.

NICHOLAS MURRAY.

Sworn before me this 21st day of March, 1866.
[SEAL.] FREDERICK BULL,
Notary Public, 58 Wall St.

CIRCUIT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF WISCONSIN.—IN EQUITY.

James T. Soutter, survivor, &c.,

vs.

The La Crosse & Milwaukee Railroad Company and others, defendants.

DISTRICT OF WISCONSIN, ss.—William J. C. Forster being first duly sworn on oath, says, that at Milwaukee, in said district, on the 29th day of January, A. D. 1866, he served on the Milwaukee and St. Paul railway company, a duplicate of the foregoing printed and written document marked "A," certified under the seal of said court and stamped with a United States revenue stamp, as the foregoing document "A" is stamped, by delivering the same and leaving the same with Alanson Cary, secretary of said Milwaukee and St. St. Paul railway company, in his said secretary's office, in said Milwaukee, and that he served said document "A" upon the persons named below, at the dates respectively set opposite their names, by deliv-

ering to and leaving with each of them, at Milwaukee, in said district, a true copy thereof, and exhibiting to each of them at time of such service, the said original document marked "A," duly certified and stamped as aforesaid, viz :

January 30th, 1866, A Reasoner, superintendent of said Milwaukee and St. Paul railway company.
January 30th, 1866, John W. Cary.
January 30th, 1866, Daniel Wells, jr.
January 27th, 1866, Robert Grace, and J. Jones, who were then in possession of engine No. 26, mentioned in said order.
January 29th, 1866, J. A. Smith.
January 29th, 1866, Alexander Mitchell, president of said Milwaukee and St. Paul railway company.
January 26th, 1866, James Little, sr., and O. Blanchard, who were then in possession of engine No. 6, mentioned in said order.
January 30th, 1866, Asahel Finch, jr.
January 30th, 1866, S. S. Merrill, manager of said last named company.
January 27th, 1866, Daniel Willey and W. McCauley, who were then in possession of engine No. 4, mentioned in said order.
And further says that the said persons who were at the time of such service in possession of said engines were in such possession as employees of the Milwaukee and St. Paul railway company.
This affiiant further says that afterwards, at Milwaukee, in said district, he served a copy of the foregoing printed document marked "B" upon the persons named below, at the dates respectively set opposite their names.

February	5th,	1866,	on S. S. Merrill.
"	"	"	Alexander Mitchell.
"	"	"	John W. Cary.
"	"	"	A. Finch, jr.
"	"	"	Alanson Cary, secretary.
"	"	"	A. Reasoner, superintendent.
"	10th	"	Daniel Wells, jr.

This affiant further says that the printed documents mentioned in this affidavit are those which are prefixed to the affidavit of Nicholas Murray foregoing.

WILLIAM J. C. FORSTER.

Subscribed and sworn before to me this 7th day of April, A. D. 1866.

JAMES McFARLIN,
U. S. Commissioner, District of Wisconsin.

CIRCUIT COURT OF THE UNITED STATES.

FOR THE DISTRICT OF WISCONSIN—IN EQUITY.

James T. Soutter, survivor, &c.,

vs.

The La Crosse & Milwaukee Railroad Company and others.

DISTRICT OF WISCONSIN, ss.—Erastus A. Patterson being first duly

sworn on oath, says, that he is now auditor of the Milwaukee and Minnesota railroad company, and that ever since the 1st day of May, A. D 1862, up to February 1st, 1866, he had been in the employment of the Milwaukee and St. Paul railway company.

He further says that when the receiver took possession of the La Crosse and Milwaukee railroad in this district on the 11th day of June, 1860, the rolling stock on said road was as follows, exclusive of forty box cars mentioned in the final order or decree of sale in this cause, viz:

Twenty-three Locomotives: Numbered from one to 21 inclusive, and number 26 to 27 inclusive.

Seventeen first-closs passenger cars, numbered from one to four inclusive, and from six to eighteen inclusive.

Nine second-class and baggage cars, numbered from 1 to 9 inclusive.

Three mail and express cars, numbered from one to three inclusive.

Six caboose cars, numbered from 1 to six inclusive.

One Hundred Eighty-Two box freight cars, numbered even numbers from 2 to 328 inclusive, and from 410 444 inclusive.

One Hundred and Twenty platform cars, numbered odd numbers from 1 to 239 inclusive

Forty-Eight hand cars.

Six rubble cars.

Four wood cars.

Two snow plows.

This affiant further says that the rolling stock purchased and built by the receiver while in possession of said road prior to the final decree or order of sale in this cause was as fallows, viz:

Eight Locomotives, numbered 22 to 25 inclusive, and numbered 28 to 31 inclusive.

Two passenger cars numbered 19 and 20 inclusive.

Two-Hundred and Twenty-Eight box freight cars numbered even numbers from 446 to 900 inclusive.

One wrecking and pile driving car.

That since the demand made by the Milwaukee and Minnesota railroad company, on the said receiver, Hans Crocker, and the Milwaukee and St. Paul railway company, in January last, for possession of that portion of said rolling stock to which said Milwaukee and Minnesota railroad company is or claims to be entitled under the orders and decrees in this cause, said receiver and said Milwaukee and St. Paul railway company have delivered to the Milwaukee and Minnesota railroad company the following rolling stock, viz:

Fourteen Locomotives numbered 1, 2, 7, 10, 11, 12, 14, 16, 20, 22, 24, 25, 29 and 30.

Eight passengers cars numbered 1, 7, 13, 15, 17, 18, 19, 20.

Four baggage cars numbered 1, 4, 6 and 7.

Three mail and express cars numbered 1, 2 and 3.

Four caboose cars numbered 2, 5, 102 and 170.

Eighteen platform cars numbered 151, 143, 93, 161, 101, 109, 157, 119, 83, 23, 117, 77, 149, 97, 121, 151, 3 and 223.

One hundred and fifty box cars numbered 84, 154, 60, 36, 10, 134, 138, 6, 242, 202, 292, 242, 390, 318, 456, 496, 494, 492, 446, 478, 452, 480, 466, 458, 450, 403, 468, 548, 566, 592, 512, 546, 506, 514, 524, 574, 588, 562, 516, 564, 560, 568, 531, 572, 576, 584, 590, 580, 554, 582, 552, 558, 586, 598, 670, 626, 622, 686, 688, 628, 656, 654, 616, 682, 646, 676, 620, 610, 642, 608, 630, 606, 666, 698, 696, 690, 614, 602, 658, 674, 696, 624, 662, 660, 684, 650, 678, 618, 600, 672, 664, 726, 730, 760, 712,

766, 756, 798, 710, 790, 774, 762, 782, 704, 740, 796, 722, 716, 754, 758, 742, 768, 738, 724, 776, 750, 708, 700, 748, 718, 702, 720, 746, 786, 752, 82, 810, 800, 850, 818, 874, 858, 842, 804, 854, 820, 808, 844, 802, 838, 828, 806, 876, 848, 856, 822. 338, 482.

All of which rolling stock so returned and delivered to said Milwaukee and Minnesota railroad company. is parcel of the rolling stock on the said rood, when said receiver was appointed, or that which was purchased or built by said receiver, and that the balance of said rolling stock on said road when said receiver was appointed, and that purchased and built by said receiver as aforesaid, is still in the possession of said Milwaukee and St. Paul railway company as this affiant is informed and believes; that is to say:

Seventeen Locomotives.
Nine passengers cars (two having been destroyed.)
Five baggage cars.
Two caboose cars.
Fifty-Nine platform cars.
Two hundred and sixty box cars.
Four wood cars.
Thirty-two hand cars.
Two snow ploughs
One wrecking and pile driving car.

This affiant further says, that of the said rolling stock so retained by the said Milwaukee and St. Paul railway company, the following formed part of the rolling stock on the road when the said receiver was appointed as hereinbefore stated, viz:

Twelve locomotives.
Eleven passenger cars.
Five baggage cars
Two caboose cars.
Fifty nine platform cars.
One hundred and sixty seven box cars.
Four wood cars.
Thirty-two hand cars.
Two snow ploughs

And that the same are reasonably worth five hundred, twenty-five thousand, one hundred and seventy dollars; and that of said rolling stock purchased or built by said receiver, the following is restrained by said Milwaukee and St. Paul railway company:

Five locomotives out of *eight.*
Ninety-three box cars, out of *two hundred and twenty-eight.*
One wrecking and pile driving car.

And that the same is reasonably worth, one hundred and eighty-five thousand dollars. And further that he is informed by a letter from said Hans Crocker to Matt. H. Carpenter hereto attached and marked exhibit No. 1, and verily believes that said Crocker as receiver in this cause, on the 20th day of January, A. D. 1866, made a writeen demand on said Milwaukee and St. Paul railway company, a copy of which is hereto attached and marked exhibit No. 2, and that said last named company has never complied therewith, but on the contrary thereof that said last named company on the 27th day January, A. D. 1866, by a written communication addressed to said receiver, which is hereto attached and marked exhibit No. 3, refused so to do, and still does refuse to comply therewith.

And further that he is informed by a letter from said receiver to said Carpenter, which is hereto attached and marked exhibit No. 4, and verily

believes that said Crocker afterwards on the 31st day of January, A. D. 1866, made another communication to said last named company, a copy of which is hereto attached and marked exhibit No. 5.

This affiant further says that he is acquainted with the handwriting of S. S. Merrill, and of Hans Crocker, and has seen them both write, and that the signatures respectively to said exhibits Nos. 1, 2, 3, 4, 5 and 6, hereto and hereafter attached, are genuine.

This affiant further says that exhibit No. 6, hereto attached, is the written refusal of the Milwaukee and St. Paul railway company by S. S. Merrill, its manager, to comply with the demand of said Milwaukee and Minnesota railroad company, contained in the printed document marked "A," attached prefixed, to the foregoing affidavit of Nicholas Murray, and that the signature of said Merrill thereto is genuine.

This affiant further says that since the 1st day of January last, the following named persons have been and now are officers and directors of the Milwaukee and St. Paul railway company, viz: Alexander Mitchell, president and director, S. S. Merrill, manager and director, A. Reasoner, superintendent, Alanson Cary, secretary, and Washington Hunt, W. S. Gurnee, F. P. James, John W. Cary, Selah Chamberlain, Russell Sage, N. A. Cowdry, C. B. Wesley, Horace Galpin, David M. Hughes and Daniel Wells, jr., directors.

This affiant further says that the said Milwaukee and Minnesota railroad company has suffered damages in consequence of the non-delivery of said rolling stock by the said Milwaukee and St. Paul railway company, its officers and directors, as it ought to have done in obedience to the order and decree of this court in this cause in that behalf, to a large amount, and in the opinion of this affiant to an amount exceeding fifty thousand dollars.

ERASTUS A. PATTERSON.

Subscribed and sworn to before me this 7th day of April, A. D. 1866.

JAMES McFARLIN,
U. S. Commissioner, District of Wisconsin.

"EXHIBIT No. 1."

MILWAUKEE, January 30th, 1866.

M. H. Carpenter, Esq., Att'y, &c:

DEAR SIR:—I enclose a copy of my letter of the 20th inst., to the Milwaukee and St. Paul railway company, demanding possession of the rolling stock, &c., and of their reply of the 27th, the delay was occasioned by the absence of Mr. Mitchell, the president of the road.

Very Respectfully,
H. CROCKER,
Receiver, &c.

"EXHIBIT No. 2."

MILWAUKEE, Jan. 20th, 1866.

S. S. Merrill, Esq., Superintendent of the Milwaukee and St. Paul Railway:

DEAR SIR:—In obedience to the order of the circuit court of the United States for the District of Wisconsin, I have this day surrendered to the Milwaukee and Minnesota railroad company the Eastern Division of the La Crosse railroad, with all the personal property and rolling stock then in my possession as receiver; the order further requires your company and myself to surrender such original rolling stock as I received under the appointment in the land grant case and Howard case, and which I surrendered to you under the order of court in the land grant case; I therefore demand posses-

sion of all said rolling stock, for the purpose of surrendering the same to the Milwaukee and Minnesota railroad company ; said order further requires me to deliver a part of certain property enumerated in the order (copies of which have been served upon your company) to the said Milwaukee and Minnesota R. R. Co., and part to your company. As a portion of said last mentioned stock has in operating the Eastern Division and making connections with the western been necessarily run upon your division, and in fact been claimed by you, as rightfully in your possession under orders of the court, I now demand the same of you, for the purpose of dividing the same as required by said orders, and request that you and said company voluntarily agree upon a fair division, if not, I must take the responsibility of dividing said stock as justly and as much in accordance with the interest of both companies as I can.

Very respectfully,
H. CROCKER,
Receiver.

"EXHIBIT No. 3."

OFFICE OF THE MILWAUKEE & ST. PAUL RAILWAY COMPANY.

MILWAUKEE, January 27th, 1866.

Hans Crocker, Esq., Receiver, &c :

DEAR SIR :—Your favor dated the 20th inst , is this day received.

We do not admit your exclusive possession of or right to divide the rolling stock purchased and built by you as receiver, consisting of eight locomotives, two passenger cars, one baggage car, six caboose cars, and one hundred and thirty-four freight cars. This rolling stock has since the first day of May, 1864, been in the joint possession of yourself and this company. The order of July 18th, 1865, entered by the circuit court of the United States in the case of Soutter, survivor, &c., vs. La Crosse R. R. Co. et. al. required that you should deliver to the Milwaukee and Minnesota company the proportion of said rolling stock belonging to the Eastern Division, but made no provision for the division thereof.

It is therefore necessary for yourself and this company to make some division of it in order that you may be able to carry out the said order of the court.

For that purpose we propose a division as follows : you may take six of the eight locomotives, one of the two passenger cars, all of the caboose cars and one hundred and twelve of the one hundred and thirty-four freight cars, subject to the further order of the court, or such arrangement as may be made between the parties interested to effect a more perfect and accurate division.

If this proposition is not satisfactory to you we should desire to receive one from you.

Of the locomotives so purchased by you, Nos. 22, 24 and 25 are now on the Eastern Division, and in possession of the Milwaukee and Minnesota Co.; No. 36 (formerly 31) is at Portage, subject to your order, and Nos. 29 and 30 are now undergoing slight repairs at our shop at Watertown, but will be at Portage on Tuesday next subject to your order, one of the passenger cars and nearly all the caboose cars are now on the Eastesn Division, and a considerable portion of the freight cars. The remainder of the freight and caboose cars, will be delivered at Portage subject to your order as soon as they can be collected and brought there. The locomotives Nos. 23 and 28, which we propose to retain are at our shops at Watertown, unfit for use and being repaired by this company.

The rolling stock that was on the road when you took possession as receiver on the 11th day of June, 1860, was by an order of the court, made in the land grant cause on the 12th day of June, 1863, delivered to this company as purchaser under the decree in that case, and since that time has not been in your custody or under your control, but has been in the exclusive possession of this company. We must therefore decline to recognize your right as receiver to receive demand or from us any portion of said last named rolling stock.

The title to this stock is now in litigation between this company and the Milwaukee and Minnesota company, and whenever the court shall have passed upon our right we shall cheerfully conform to its decision.

In the meantime, in order that the public may not be incommoded, and that the Minnesota company may have ample stock to operate said Eastern Division, we shall furnish of said rolling stock to said company sufficient in addition to their proportion of that purchased by the receiver to operate their road.

We have already furnished them from said original stock nine locomotives and passenger and freight cars for the transaction of their business, and shall furnish them all that may be necessary in addition to their proportion of that purchased by the receiver for the successful operation of said Eastern Division.

Yours Respectfully,
S. S. MERRILL,
General Manager.

"EXHIBIT No. 4."

MILWAUKEE, January 31, 1866.

M. H. Carpenter, Att'y, &c., Esq.:

DEAR SIR:—I enclose a copy of a letter to-day sent by me to the M. and St. P. W. Co., in reference to division of the rolling stock owned jointly by them and your company, that is the rolling stock bought and built by me. Not being an expert and not knowing the present value of this property, I have thought it proper to leave the matter to those I believe competent to determine this value. If this arrangement is satisfactory to your company, I would like their approval in writing.

Yours, etc.,
H. CROCKER,
Receiver.

"EXHIBIT No. 5."

MILWAUKEE, January 31, 1866.

S. S. Merrill, Esq., Manager of the M. & St. P. R. W. Co.:

DEAR SIR:—I am desirous, as soon as possible, of making a division of the rolling stock purchased and built by me, and owned jointly, by the Eastern Division of the L. and M. R. R., and your company, upon the basis fixed by the court. I assume that in making this division, we must take the stock as it now is, and not as when built or purchased by me. For the purpose of making this division, I propose that Mr. Dwight Goodrich, and Mr. W. E. Kittridge shall estimate and return to me the value of this rolling stock at the present time, and upon receiving their return and award, I will make a division as nearly just as possible.

You may object to the parties as they are both now in the service of the Eastern Division (the M. and M. R. R. Co.) I have selected them, as they were in my service when this rolling stock was purchased and built, and

both being competent men I think them best qualified to determine the value of this property, while I have the power to make an arbitrary division, I prefer to make one satisfactory to all parties.

Yours, etc.,
H. CROCKER.

Each car and engine will be numbered and appraised.

"EXHIBIT No. 6."

OFFICE OF THE MILWAUKEE AND ST. PAUL RAILWAY COMPANY,
Milwaukee, 186 .
MILWAUKEE, Jan. 29th, '66.

To the Milwaukee and Minnesota Railroad Company:

Your printed demand upon this company for the delivery to A. Fleming of all of the rolling stock mentioned in the order of July 18th, 1865, entered in the case of James T. Soutter, survivor, vs. La Crosse and Milwaukee railroad company and others in the circuit court of the United States for the District of Wisconsin, is this day received.

The rolling stock mentioned in said order purchased by the receiver, consisting of eight (8) locomotives, two (2) passenger cars, one (1) baggage car, six (6) caboose cars, and one hundred and thirty-four (134) house freight cars, has never been divided, but since the first day of May, 1864, has been in the joint possession of the receiver and of this company, and is owned jointly by this company and the East Division of said La Crosse and Milwaukee railroad.

The order of July 18th, 1865, requires the receiver to deliver a certain undivided proportion of said rolling stock to you, but provides no way or means of making a division or specifying the particular locomotives or cars to be delivered.

A portion of this stock has already been delivered to you by the receiver, to-wit: three (3) locomotives and a large number of cars. One of the locomotives is now at Portage subject to the order of the receiver, and the remaining four (4) are in our shops at Watertown undergoing repairs. Two of them will be at Portage this week under the control of the receiver, and the cars on our line are being collected as rapidly as possible at Portage, so that the proportion belonging to the Eastern Division may be delivered by the receiver.

In order to enable the receiver to deliver to you in severalty the proportion of said rolling stock belonging to the Eastern Division, we have proposed to him a division thereof subject to future review and correction by the court or by the agreement of parties interested, and are ready to cooperate with him in making a fair and equitable division thereof.

We claim no interest in or control over the proportion of rolling stock purchased by the receiver, belonging to the Eastern Division, and will unite with the receiver in making a division of the stock so purchased, and furnish him every facility in our power, when divided, to make an immediate delivery thereof to you.

The rolling stock, which was on the road June 18th, 1860, of which the receiver took possession, was by the order of the district court made on the 12th day of June, 1863, in the land grant foreclosure suit, taken from the receiver and delivered to this company as purchaser thereof under the land grant decree, and the receiver was as to said property discharged, since which time this company has been in the exclusive possession thereof. The title of this stock is now in litigation between this company and you, which litigation is not yet determined. No order has been entered therein disturb-

ing our possession, whenever the court shall have disposed of the question there raised, and settle the title and ownership of said stock, we shall cheerfully conform to its decision.

In the meantime we would avoid so far as possible any inconvenience to the public or injury to you arising therefrom; we shall therefore furnish to you of said stock, sufficient to enable you, with your proportion of that purchased by the receiver, to operate your road.

To that end we have already delivered to you, as of our own property, nine (9) of said locomotives, together with passenger, mail, baggage and freight cars, which are now in your possession, and should the stock already furnished you by us, together with the proportion of that purchased by the receiver belonging to you, prove insufficient to operate your road, we will furnish in addition of said original stock, an ample and more than sufficient quantity for that purpose; and in case of a difference of opinion on the subject, we will submit to the decision of any suitable and impartial umpire you may name.

Further than this we do not propose to deliver to you any part or portion of said rolling stock so on said road on the 11th day of June, 1860, but claim the same as of right and legally and properly in our possession and under our control; and we are advised that the course above indicated is practically a full and complete compliance with said order of July 18th, 1865, so far as the same is obligatory or binding upon us.

Respectfully, yours,
S. S. MERRILL,
General Manager.

CIRCUIT COURT OF THE UNITED STATES.

FOR THE DISTRICT OF WISCONSIN.—IN EQUITY.

James T. Soutter, survivor, &c.,

vs.

The La Crosse & Milwaukee Railroad Company and others.

To John W. Carey, Esq., Solicitor and Counsel for the Milwaukee and St. Paul Railway Company:

SIR—You will please take notice that on the opening of the said Court, at the court room of said Court, in the city of Milwaukee, on Wednesday morning, April 25, 1866, or so soon thereafter as counsel can be heard, a motion will be made by me on behalf of the Milwaukee and Minnesota Railroad Company, one of the defendants in this cause, to attach the officers and directors of the Milwaukee and St. Paul Railway Company, viz.:

Alexander Mitchell, President; S. S. Merrill, Manager; A. Reasoner, Superintendent; A. Cary, Secretary and Treasurer; and Washington Hunt, W. S. Gurnee, F. P. James, J. W. Cary, S. Chamberlain, Russell Sage, N. A. Cowdry, C. B. Wesley, Horace Galpin, D. M. Hughes, and Dani l Wells, Jr.,

Directors of said Milwaukee and St. Paul Railwry Company, for contempt of said Court in refusing to comply with the order of said court made in

this cause on the 18th day of July, A. D. 1865: and for refusal to deliver to the Milwaukee and Minnesota Railroad Company, the rolling stock mentioned and described in said order, according to the demand of the Milwaukee and Minnesota Railroad Company in that behalf heretofore made by said company, on the Milwaukee & St. Paul Rrilway company, and the officers and directors thereof: a copy of which demand and accompanying papers is Exhibit "A" to affidavit of Nicholas Murray hereto attached and that they may be dealt with according to law.

And for an order of said court, sequestrating the stock, railroad property, assets and effects of the said Milwaukee and St. Paul Railway Company, and for the appointment of sequestrators therefor, to receive and manage the same until said company, its officers and directors, shall comply with said order of said court, and answer all damages in the premises; and for such other and further relief as the said Milwaukee and Minnesota Railroad Company may be entitled to in the premises, and as shall be agreeable to equity and good conscience, a copy of which motion is hereto, hereafter, attached.

This motion will be founded on the annexed and foregoing papers, and upon the records, proofs and papers, on file in this cause.

You will further take notice that, on the hearing of said motion, an affidavit of Nicolas Murray will be read, correcting a mistake of date of service of papers, as therein set forth, from 1856, as erroneously written, to 1866, as the fact is, as to said service.

Dated April 5th, 1866.

MATT. H. CARPENTER,

Sol. for the Mil. and Minn. R. R. Co.

CIRCUIT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF WISCONSIN.—IN EQUITY.

James T. Soutter, survivor, &c.,

vs.

The La Crosse & Milwaukee Railroad Company and others, defendants.

Here in court comes the Milwaukee and Minnesota Railroad Company, one of the defendants in this cause, by Matt. H. Carpenter, its solicitor, and on the record, proofs and papers, on file in this cause, and on foregoing affidavits and papers hereto attached, moves the court now here for an order of said court herein directing attachment to issue out of, under the seal of this court in due form of law, or in such form as the said court shall by said order direct against Alexander Mitchell, President of the Milwaukee and St. Paul Railway Company; S. S. Merrill, manager of said company; A. Reasoner, Superintendent of said company; A. Cary, Secretary and Treasurer of said company; and Washington Hunt, W. S. Gurnee, Frederick P. James, John W. Carey, Selah Chamberlain, Russell Sage, N. A. Cowdry, C. B. Wesley, Horace Galpin, David M. Hughes, and Daniel Wells, Jr., Directors of said company; and that such proceedings may be

thereupon had, as are agreeable to equity and good conscience, to convict said officers and directors of contempt of this court, for disobedience to and refusal to comply with the order of said court, as shown in the annexed and foregoing papers; and that said officers and directors may be held in close custody until they shall obey said order by delivering possession of said rolling stock under and according to the said order of said court, a certified copy of which is part of said document "A," attached to the foregoing affidavit of Nicholas Murray, and for such other, and further, or different, relief in the premises as shall be agreeable to equity and good conscience.

The said Milwaukee and Minnesota Railroad Company further moves said court for an order to be made in this cause, sequestrating the stock, railroad property, real and personal, assets and effects of the said Milwaukee and St. Paul Railway Company, and for the appointment of sequestrators to receive, hold and manage the same, until said last named company, its officers and directors, shall comply with the said order of this court in the cause hereinbefore mentioned, and until said company shall pay, or cause to be paid all damages to this defendant arising from the said disobedience of said order by said last-named company, its officers and directors, or until such other time as this court shall direct; and that it may be referred to a master of this court to ascertain and report to said court the amount of such damage so sustained by this defendant; and that this defendant may have such other, and further, or different relief in the premises as shall be agreeable to equity and good conscience: and that the said officers and directors of said company may be adjuged and decreed by said court to be personally liable for the damages sustained by this defendant in the premises; and that they may be personally ordered and decreed to pay the same when ascertained as aforesaid, and that they may be committed until the same be ascertained and paid, or that this defendant may have such other and further relief in the premises as the nature of its case may require, and as shall be agreeable to equity and good conscience.

MATT. H. CARPENTER,
Solicitor for the Mil. and Minn. R. R. Co.,
Defendant.

I accept service of this motion and papers for next Wednesday morning, April 7, 1866.

JOHN W. CARY,
Solicitor for M. & St. P. R. W. Co.

Filed April 11th, 1866.

UNITED STATES CIRCUIT COURT.

James T. Soutter, survivor, &c.,

vs.

The La Crosse & Milwaukee railroad company, and others.

DISTRICT OF WISCONSIN—ss.

Matt. H. Carpenter, being first duly sworn, on oath says that a copy of said chattel mortgage mentioned in the answer of the Milwaukee and St.

Paul Company, and others, filed this day to the motion for attachment and sequestration, &c., as appears from the printed record in the Land Grant Case, so-called, is attached hereto and marked "Exhibit No. 1."

MATT. H. CARPENTER.

Subscribed and sworn to before me this 13th day of April, A. D. 1866.

JAMES M'FARLIN,
U. S. Commissioner for Dis. of Wis.

"EXHIBIT NO. 1."

At a meeting of the Board of Directors of the La Crosse and Milwaukee Railroad Company, held at the office of the company, in the city of Milwaukee, on the 4th day of September, A. D. 1857, the following proceedings were had:

Mr. Palmer presented the following additional deed of trust and resolution, authorizing the execution of the same by the President and Secretary, which resolution was adopted by the Board:

Resolved, That the President and Secretary be authorized and directed to execute to Greene C. Bronson, James T. Soutter and Shepherd Knapp, in behalf of this company, a further deed of trust or mortgage of which the following is a copy, viz.:

This indenture, made and entered into this 4th day of September, in the year of our Lord one thousand eight hundred and fifty-seven, between the La Crosse and Milwaukee Railroad Company, a corporation created by the Legislature of Wisconsin, parties of the first part, and Greene C. Bronson, James T. Soutter and Shepherd Knapp, trustees, all of the City and State of New York, parties of the second part.

Whereas, the said parties of the first part did, on the 31st day of December, in the year one thousand eight hundred and fifty-six, duly execute and deliver to the said parties of the second part, as trustees, a deed of trust, bearing date on that day, wherein and whereby the said parties of the first part, for the purpose of securing the payment of certain moneys which the said party of the first part had determined to borrow,

Stipulated and provided for the issue of the bonds of the said La Crosse and Milwaukee Railroad Company, for ten millions of dollars of the date, tenor and description in the said deed of trust, particularly set forth, and payable, principal and interest, as therein provided; and whereas the said railroad company, in and by the said deed of trust granted, bargained, sold, conveyed and confirmed unto the said parties of the second part, all and singular, the several tracts of land which then was, or thereafter might be, or constitute the site of the roadway, turnouts, engine houses, workshops, depots and other buildings of the said company, and other lands, buildings, and estate, and property, real and personal and mixed, therein specially and particularly described, which conveyance was in and by the said deed of trust declared to be and was made to the said parties of the second part, and the survivors and survivor, successors and successor of them and their and his heirs and assigns in trust and upon the trusts, terms and conditions therein particularly expressed.

And whereas the said parties of the first part did, in and by the said deed of trust, covenant and agree to and with the said trustees, the said parties of the second part, that the said railroad company would, from time to time, during the continuance of the trust, make, execute, cause to be duly record-

ed, and deliver to the said trustees, or to their successors in the said trust, all such further conveyances and assurances, and would do all such further acts as might either be necessary or proper for more effectually vesting in the said trustees all such right, title, interests, or estates, both legal and equitable, as said railroad company then had, or may thereafter acquire of, in and to all and every part of the property thereby conveyed, or intended to be conveyed.

And whereas the said railroad company had, at the time of the execution of the said deed of trust, or have since, acquired certain property, which was conveyed, or intended to be conveyed, thereby, and of which a further conveyance is deemed proper for more effectually vesting in the said trustees all the title, right, interest and estate, legal or equitable, which the said company then had or have since acquired thereby [therein,]

Now, therefore, know all men by these presents, that the said parties of the first part, in pursuance of the covenants and stipulations in the said deed of trust contained, and in consideration of the premises, and of one dollar to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, conveyed and confirmed, and by these presents do grant, bargain, sell, convey, and confirm unto the said parties of the second part all and singular about 11,000 tons of iron rails, being all the iron purchased for and belonging to the said company, and lying at Milwaukee and elsewhere along the line of the road of the said company, or wherever the same or any portion thereof may be and not actually laid down in the track thereof, and all the singular the locomotives, cars, engines, tools, materials, lumber, office furniture, and personal property of every description belonging to the said company wherever the same may be.

To have and to hold all and singular the property hereby conveyed, or intended to be conveyed, to the said parties of the second part, and the survivors and survivor of them, their successors and successor, and their and his heirs and assigns, upon the like trust terms, trusts and conditions, as are in the said deed of trust contained, and all the power and authority granted to the said parties of the second part, in and by the said deed of trust, in relation to the property conveyed thereby, and in relation to the sale, conveyance and disposal thereof, and in relation to the disposition and application of the proceeds of such property in case of sale, are hereby conferred upon, granted to, and vested in, the said parties of the second party, in relation to the property hereby conveyed, as fully and effectually as if the property hereby conveyed, had constituted a part of the roadway of the said company, described in the said deed of trust, at the date thereof.

And the said parties of the second part are hereby charged with all the duties in relation to the property hereby conveyed and the sale and disposition thereof, and of the proceeds thereof, in case of sale thereof with which they are charged in relation to the property conveyed, or intended to be conveyed, by the said deed of trust; and the said parties of the second part may, and they are hereby authorized and required to treat the property hereby conveyed in the same manner, and to hold the same upon the same terms, trusts and conditions, and for the same purposes, as the property mentioned in the said deed of trust, and not otherwise; and may take possession thereof, and sell and dispose of the same in the same manner, at the same time, and upon the same conditions, as they may take possession of and sell and dispose of the property in the said deed of trust mentioned, and as a part thereof, and not otherwise; and it is hereby declared to be the object and intention of these presents and of the parties hereto to subject the property hereby conveyed, or intended to be conveyed, and every

part thereof, to the operation of the said deed of trust, and each and every stipulation and covenant therein contained as fully and effectually to all intents and purposes as if the said property hereby conveyed, or intended to be conveyed, had at the time of the execution of the said deed of trust constituted a part of the property thereby conveyed, and had then been embraced in and conveyed thereby.

In witness whereof, the said Railroad Company, has hereto affixed its cerporate seal, and caused the same to be snbscribed by its [SEAL.] President and Secretary, in the day and year first above written.

BYRON KILBOURN, President.
J. HADLEY, Sec. of the R. R. Co.

In presence of
H. M. PEABODY,
E. H. WHALING.

STATE OF WISCONSIN, } ss.
MILWAUKEE COUNTY. }

On the 4th day of September, in the year one thousand eight hundred and fifty-seven, before me came Byron Kilbourn, the President of the La Crosse and Milwaukee Railroad Company, with whom I am personally acquainted, and who being by me duly sworn, says that he resides in the city of Milwaukee, in said county, and that he is President of the La Crosse and Milwaukee Railroad Company, that the seal affixed to the foregoing indenture is the common and corporate seal of the said railroad company, and was affixed to the said indenture by order of the Board of Directors of said company, for the uses and purposes therein expressed, and that he by like order did subscribe his name thereto as President of said company, and that Jackson Hadley, as Secretary of said company, subscribed his name thereto by like order and authority.

H. L. PALMER,
Notary Public,
Milwaukee County,

and to affix thereto the corporate seal of the company, and to cause the same to be recorded in the office of the Secretary of State, and to file copies thereof whenever necessary to render the same an effective security, and to deliver the same when so executed and recorded to the said trustees.

Filed April 13, 1866.

CIRCUIT COURT OF THE UNITED STATES.

FOR THE DISTRICT OF WISCONSIN.—IN EQUITY.

James T. Soutter, survivor, &c., }
vs.
The La Crosse & Milwaukee Railroad Company and others. }

The joint and several answer of Alexander Mitchell, president, S. S.

Merrill, manager, A. Reasoner, superintendent, A. Cary, secretary and treasurer, and Washington Hunt, W. S. Gurnee, Frederick P. James, John W. Cary, Selah Chamberlain, Russell Sage, N. A. Cowdrey, E. B. Wesley, Horace Galpin, David M. Hughes and Daniel Wells, jr., directors of the Milwaukee and St. Paul railway company, and of the said Milwaukee and St. Paul railway company to the motion and the application of the Milwaukee and Minnesota railroad company for an attachment as for contempt against said parties in this cause.

Your respondent hereby protesting that the motions and proceedings of the said Milwaukee and Minnesota railroad company in this particular are not in accordance with the rules and practice of this honorable court in such cases made and provided, and that there is no cause or ground for an attachment as for contempt in the said several matters and things in the said motion and papers annexed, contained and saving and reserving to themselves all manner of benefit and advantage of exceptions to the many errors and insufficiencies therein contained for answer, thereto say:

First—That said order of July 18th, 1865, in said motion papers mentioned and contained is not such an order or decree of this honorable court as can be enforced by process of attachment as for contempt, for the reason that there is no time limited in said order within which performance thereof was to be made, as is required by the rules and practice of this court in such cases established.

Second—That said order of July 18th, 1865, was conditioned in its terms and nature, and required the delivery to the Milwaukee and Minnesota railroad company upon the condition that the said Milwaukee and Minnesota railroad company should first pay a certain amount of money into court and do and perform certain other acts, the performance of which were conditions precedent to the delivery to said railroad company as provided in said order, and that for that reason a further order of this honorable court was required, after the pretended performance by said Milwaukee and Minnesota railroad company on its part, judicially determining such performance and fixing a time within which delivery should be made to said Milwaukee and Minnesota railroad company in pursuance of said order, in order to found thereon proceedings as for a contempt, for a failure to comply therewith.

Third—Your respondents above named respectfully show and state that as they are advised and believe said Milwadkee and Minnesota railroad company never complied with the order of July 18th, 1865, of this court, in this cause, set forth in its said application so as to entitle it to the possession of the railroad therein named or any part or portion thereof, or of the rolling stock therein named, in that said Milwaukee and Minnesota railroad company did not comply with that portion of said order which required "that before said Milwaukee and Minnesota railroad company should be allowed and permitted to enter into possession as aforesaid, it should make, execute and file with the clerk of this court a bond to the United States in the penal sum of twenty-five thousand dollars, with sufficient surety, to pay to Sebra Howard and Selah Chamberlain or the owners of said judgments, or either of them, all such sums as may come into the hands of said company which shall hereafter be found to be rightly applicable to the payment of their claims, if they shall be established as liens upon said road.

That there never was any other compliance therewith than the pretended execution in the city of New York of the paper, writing, in document "A" attached to said motion, purporting to be the bond of said railroad company with Wm. R. Griffith, A. Fleming and A. C. Gunnison as sureties; that said Wm. R. Griffith, A. Fleming and A. C. Gunnison, were, at the

time of executing the same and now are citizens and residents of the state of New York, that as your respondents verily believe, and are informed said Fleming and Gunnison were at the time of executing said bond, and ever since have been and now are utterly and entirely irresponsible for any sum whatever, and that so they are reputed and esteemed, and that said Griffith is a stranger to your respondents, but that on inquiry made in the city of New York, where he is said to reside, they are unable to ascertain that he has any reliable means or property, and that he is not responsible for any amount.

That when said pretended bond was presented to the clerk of this court for his approval on the 9th day of January, 1866, and before its approval, John W. Cary above named, on behalf of the Milwaukee and St. Paul railway company, and Fred. P. James, the owners of the Chamberlain and Howard judgment, appeared before said clerk and then and there objected to the reception or approval of said bond, in writing, now on file in this court in the words and figures following, to-wit:

CIRCUIT COURT OF THE UNITED STATES

9TH CIRCUIT AND DISTRICT OF WISCONSIN.

James T. Soutter, survivor, &c.,

vs.

The La Crosse & Milwaukee Railroad Company and others.

And now comes the Milwaukee and St. Paul railway company, the owner of the Chamberlain judgment, and Fred. P. James, the owner of the Howard judgment, mentioned in the order of this court of July 18th, 1865, by John W. Cary, their solicitor, and excepts to the bond of the Milwaukee and Minnesota railroad company and the sureties thereto, filed in pursuance of said order to account for the net earnings of said railroad, and objects to the approval thereof by the clerk of the court.

First—Because said sureties are not citizens or residents of the state and district of Wisconsin.

Second—Because said sureties are wholly irresponsible and unable to respond to the penalty of said bond.

And the said Milwaukee and St. Paul railway company and said Fred. P. James, hereby demand an oral examination and justification by said sureties on oath, before said bond shall be approved by the clerk of this court.

JOHN W. CARY,
Solicitor for said M. and St. R'y Co., and
FRED. P. JAMES.

That said clerk then and there assumed authority to refuse said demand for an oral examination and justification and to overrule said exceptions.

And your respondents state that as they are advised and believe that said bond and the proceedings thereon are void and no compliance with the order of this court.

First—Because it was not competent for said railroad company to execute said bond without the bounds of said state.

2nd—Because the sureties therein named are not residents or citizens of

the state and district of Wisconsin, but are residents of the state of New York.

3d—Because said sureties being officers and directors of said railroad company, and being themselves entirely irresponsible, was notice to said railroad company of its insufficiency and its presentation to the clerk for his approval by said railroad company, was therefore a fraud upon the court and the parties interested, and was not a compliance with said order.

4th—Because the clerk is not a judicial officer, and his approval did not operate to change the character of the bond, and if the bond was not such as the law required, his approval could not cure it, but would leave it invalid still. Your respondents therefore submit that said railroad company did not comply with said order of July 18th, 1865, and were not entitled to the possession of said road or rolling stock, or any part or portion thereof, and that this proceeding should for that reason be dismissed.

Fourth—Your respondents further show that since the first day of May, 1864, up to the time, when the Milwaukee and Minnesota railroad company took possession of the Eastern Division of said La Crosse railroad; the rolling stock purchased by the Receiver, had been and then was in the joint possession of the Milwaukee and St. Paul railway company, and Hans Crocker, the Receiver of said Eastern Division, and that the same was owned jointly by said railway company and the owners of the Eastern Division of said La Crosse and Milwaukee railroad. That the proportion thereof belonging to the Milwaukee and St. Paul railway company was such proportion of the whole thereof as the net earnings of the western division of said La Crosse railroad bore to the net earnings of the eastern division thereof, while the whole road was operated by the Receiver, prior to the sale of the said western division, which proportions were fixed by said order of July 18th, 1865, in value as $26.199 00 to the Milwaukee and St. Paul railway company, to $121.178 00 to the Eastern Division, but that no valuation or division of said rolling stock was made by said order or in any other manner and that no valuation or division thereof had ever been made.

That during the whole time from May 1, 1864, to the 20th day of January, 1866, when the Minnesota company took actual possession of the said eastern division, said rolling stock so purchased by the Receiver, was used in common with the rolling stock of the Milwaukee and St. Paul railway company, on the said eastern division and on the Milwaukee and St. Paul railway company's road, under the arrangement made between the Receiver and said railway company, and such portion of said rolling stock as was on said eastern division when said railroad company took possession, was left there.

That afterward, and on the 27th day of January, 1866, the Milwaukee and St. Paul railway company received from Hans Crocker, Receiver, a notice in writing relative to said rolling stock in the words and figures following to-wit:

MILWAUKEE, Jan. 20th, 1866.

S. S. Merrill, Esq., Superintendent of the Milwaukee and St. Paul Railway:

DEAR SIR:—In obedience to the order of the circuit court of the United States for the District of Wisconsin, I have this day surrendered to the Milwaukee and Minnesota railroad company the Eastern Division of the La Crosse railroad, with all the personal property and rolling stock then in my possession as receiver; the order further requires your company and myself to surrender such original rolling stock as I received under the appointment

in the land grant case and Howard case, and which I surrendered to you under the order of court in the land grant case; I therefore demand possession of all said rolling stock, for the purpose of surrendering the same to the Milwaukee and Minnesota railroad company; said order further requires me to deliver a part of certain property enumerated in the order (copies of which have been served upon your company) to the said Milwaukee and Minnesota R. R. Co., and part to your company. As a portion of said last mentioned stock has in operating the Eastern Division and making connections with the western been necessarily run upon your division, and in fact been claimed by you, as rightfully in your possession under orders of the court, I now demand the same of you, for the purpose of dividing the same as required by said orders, and request that you and said company voluntarily agree upon a fair division, if not, I must take the responsibility of dividing said stock as justly and as much in accordance with the interest of both companies as I can.

Very respectfully,
H. CROCKER,
Receiver.

Which was the first demand or request of any kind or description made upon said Milwaukee and St. Paul railway company for said rolling stock. That on the day of the receipt of said communication from Hans Crocker, Receiver, the Milwaukee and St. Paul railway company answered the same in writing as follows, to-wit:

No further communication was received from said receiver until on or about the 31st of January, 1866, when the Milwaukee and St. Paul railway company received the following proposition from him, to-wit:

OFFICE OF THE MILWAUKEE & ST. PAUL RAILWAY COMPANY.

MILWAUKEE, January 27th, 1866.

Hans Crocker, Esq., Receiver, &c:

DEAR SIR:—Your favor dated the 20th inst, is this day received.

We do not admit your exclusive possession of or right to divide the rolling stock purchased and built by you as receiver, consisting of eight locomotives, two passenger cars, one baggage car, six caboose cars, and one hundred and thirty-four freight cars. This rolling stock has since the first day of May, 1864, been in the joint possession of yourself and this company. The order of July 18th, 1865, entered by the circuit court of the United States in the case of Soutter, survivor, &c., vs. La Crosse R. R. Co. et. al. required that you should deliver to the Milwaukee and Minnesota company the proportion of said rolling stock belonging to the Eastern Division, but made no provision for the division thereof.

It is therefore necessary for yourself and this company to make some division of it in order that you may be able to carry out the said order of the court.

For that purpose we propose a division as follows: you may take six of the eight locomotives, one of the two passenger cars, all of the caboose cars and one hundred and twelve of the one hundred and thirty-four freight cars, subject to the further order of the court, or such arrangement as may be made between the parties interested to effect a more perfect and accurate division.

If this proposition is not satisfactory to you we should desire to receive one from you.

Of the locomotives so purchased by you, Nos. 22, 24 and 25 are now on the Eastern Division, and in possession of the Milwaukee and Minnesota

Co.; No. 36 (formerly 31) is at Portage, subject to your order, and Nos. 29 and 30 are now undergoing slight repairs at our shop at Watertown, but will be at Portage on Tuesday next subject to your order, one of the passenger cars and nearly all the caboose cars are now on the Eastesn Division, and a considerable portion of the freight cars. The remainder of the freight and caboose cars, will be delivered at Portage subject to your order as soon as they can be collected and brought there. The locomotives Nos. 23 and 28, which we propose to retain are at our shops at Watertown, unfit for use and being repaired by this company.

The rolling stock that was on the road when you took possession as receiver on the 11th day of June, 1860, was by an order of the court, made in the land grant cause on the 12th day of June, 1863, delivered to this company as purchaser under the decree in that case, and since that time has not been in your custody or under your control, but has been in the exclusive possession of this company. We must therefore decline to recognize your right as receiver to receive demand or from us any portion of said last named rolling stock.

The title to this stock is now in litigation between this company and the Milwaukee and Minnesota company, and whenever the court shall have passed upon our right we shall cheerfully conform to its decision.

In the meantime, in order that the public may not be incommoded, and that the Minnesota company may have ample stock to operate said Eastern Division, we shall furnish of said rolling stock to said company sufficient in addition to their proportion of that purchased by the receiver to operate their road.

We have already furnished them from said original stock nine locomotives and passenger and freight cars for the transaction of their business, and shall furnish them all that may be necessary in addition to their proportion of that purchased by the receiver for the successful operation of said Eastern Division.

Yours Respectfully,
S. S. MERRILL,
General Manager.

No further communication was received from said receiver until on or about the 31st of January, 1866, when the Milwaukee and St. Paul Railway company, received the following proposition from him to with :

MILWAUKEE, January 31, 1866.

S. S. Merrill, Esq., Manager of the M. & St. P. R. W. Co. :

DEAR SIR :—I am desirous, as soon as possible, of making a division of the rolling stock purchased and built by me, and owned jointly, by the Eastern Division of the L. and M. R. R, and your company, upon the basis fixed by the court. I assume that in making this division, we must take the stock as it now is, and not as when built or purchased by me. For the purpose of making this division, I propose that Mr. Dwight Goodrich, and Mr. W. E. Kittridge shall estimate and return to me the value of this rolling stock at the present time, and upon receiving their return and award, I will make a division as nearly just as possible.

You may object to the parties as they are both now in the service of the Eastern Division (the M. and M. R. R. Co.) I have selected them, as they were in my service when this rolling stock was purchased and built, and being competent, honest men I think them best qualified to determine the value

of this property, while I have the power to make an arbitrary division, I prefer to make one satisfactory to all parties.

Yours, etc.,
H. CROCKER.
Receiver.

This proposition of the *Receiver* was immediately, and on the same 31st day of January, 1866, accepted by the said *Milwaukee and St. Paul Railway Company*, in writing, as follows, to wit:

Milwaukee, January 31, 1866.

COL. H. CROCKER, Receiver,

DEAR SIR:

Your favor of this date, in reference to division of rolling stock purchased by you, proposing to have D. Goodrich and W. E. Kittredge estimate the present value of each car, engine, etc., and return the same to you, and that you make the division thereof, is received. Your proposition is satisfactory, and we assent to it.

Yours Respectfully, &c.,
S. S. MERRILL,
General Manager.

Your respondents further show that said Goodrich and Kittredge were at the time of making and accepting said proposition in the employ of the said Milwaukee and Minnesota Railroad Company, one as master mechanic and the other as superintendent of the car shop, and that they had formerly been in the employ of the said Receiver and of the Milwaukee and St. Paul Railway Company in the same capacity, and were well qualified to estimate the value of said rolling stock.

Your respondents further show that they are now and ever since the said 31st day of January, when said proposition was accepted, have been ready and willing to submit to and carry out such disposition and division of the said rolling stock whenever the same shall be made by the Receiver. That no proposition for a division thereof has ever been made to these respondents or any of them, by the said Milwaukee and Minnesota Railroad Company, of any kind or description, and that no other proposition except as above set forth, has ever been made to them for such division, and the respondents expressly deny that they have ever in any manner refused to comply with said order of July 18th, 1865, in relation to the rolling stock purchased by the Receiver but have at all times been willing to submit to any fair and just method of dividing the same on the basis fixed by the Court in said order, and in all things and in all ways stand to and abide by said order while in force, relating to said rolling stock so purchased and built by the Receiver, and so advised the Milwaukee and Minnesota Railroad Company, as appears by the letter of S. S. Merrill, General Manager, hereinafter set forth.

And these respondents further show that the whole amount of rolling stock purchased and built by the Receiver, which was still in use on the 4th day of January, 1866, was as follows, to-wit:

Locomotive Engines, (22, 23, 24, 25, 28, 29, 30, 31,)	8
Passenger Coaches, (19 and 20) - - - - -	2
Baggage cars, (No. 9,) - - - - -	1
Box Cars, - - - - - - - - -	224

That of this stock so purchased and built by the Receiver, there has been delivered by the respondents Milwaukee and St. Paul Railway Company,

and said Hans Crocker, Receiver, to the Milwaukee and Minnesota Railroad Company, the following Locomotives and Cars, to-wit:

Locomotive Engines, (22, 24, 25, 29, 30, 31. new No. 36,)	6
Box Cars, - - - - - - - - - -	155
Baggage Cars, - - - - - - - - -	1
Passenger Coaches, [19 and 20] - - - - -	2

And that the remainder of said stock is now in the possession of the Milwaukee and St. Paul Railway Company. That forty-three of the above named box cars were flat cars, which were on the road when the Receiver took possession on the 11th day of June, 1860, and were by the Receiver changed into box cars, and six of the box cars that were on the road on the said 11th day of June, 1860, were by the Receiver changed into caboose cars, and four of the box cars built or purchased by the Receiver were used up in the service prior to the 4th of January, 1866.

Fifth. And your respondents further answering as to the rolling stock which was on the road and of which the Receiver took possession on the 11th day of June, 1860, on information and belief respectfully show unto this honorable Court, that all of said last named rolling stock was covered by and included in the mortgage given by the La Crosse and Milwaukee Railroad Company to Greene C. Bronson, James T. Soutter and Shephard Knapp, and that the said receiver took possession thereof in virtue of his appointment in the foreclosure suit of said Bronson, Soutter and Knapp, against the La Crosse and Milwaukee Railroad Company and others, brought to foreclose the Land Grant Mortgage above mentioned, in the District Court of the United States for the District of Wisconsin, that the same was included in the decree of foreclosure and sale in that cause directed to be sold, and that the same was sold by the Marshal by virtue of the decree in that cause, on the 25th day of April, 1863, and conveyed by him to Pratt and White, on said sale. That said Pratt and White on the 5th day of May, 1863, conveyed the same to the Milwaukee and St. Paul Railway Company, which said Company thereby became the owner of all of said rolling stock, together with the Western Division of said railroad, all of which said rolling stock was then in the hands of Hans Crocker as receiver, that afterwards and on the 6th day of May, 1863, said Milwaukee and St. Paul Railway Company applied by petition to the said District Court of the United States to be let into the possession of the property so purchased, and that the Receiver be discharged therefrom. That said application was opposed by the Milwaukee and Minnesota Railroad Company, so far as it related to said rolling stock and time asked to prepare to oppose the same, that thereupon, on the 7th day of May, 1863, the Court granted said application so far as the same was not opposed, but required the Milwaukee and St. Paul Railway Company to operate the road jointly with the Receiver, and continued the application for 30 days, at the request of the said Milwaukee and Minnesota Railroad Company. That no possession was ever taken under the said order of May 7th, 1863, by the Milwaukee and St. Paul railway company, but the same remained in the exclusive possession and control of the said Receiver, that afterwards, and on the 11th day of June, 1863, said Milwaukee and Minnesota railroad company filed its answer to said application as to said rolling stock, [copies of which are hereto annexed, exhibit No. 1) and thereupon said District Court made its order thereon in the words and figures following, to wit:

UNITED STATES OF AMERICA, } ss.
DISTRICT OF WISCONSIN, }

At a stated term of the District Court of the United States of America,

for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said District of Wisconsin, on the first *Monday*, being the fifth day, of *January*, A. D. 1863, present the honorable Andrew G. *Miller*, *Judge* of said Court, presiding.

On the 13th day of the said term, to wit, on the 12th day of *June*, A. D. 1863, the following proceedings were had, to-wit:

Green C. Bronson, James T. Soutter and Shephard Knapp, trustee vs. La Crosse and Milwaukee railroad company, J. Albert Helfenstein, trustee et. al.—In equity.

On consideration of the said petition of the Milwaukee and St. Paul railway company, and of the arguments of counsel, it is ordered by the court that there be delivered over to the said Milwaukee and St. Paul railway company all and singular the railroad between the city of La Crosse and Portage City, its road bed and tracks with its depots, station-houses, and all other property belonging to said railroad between the said points; and the forty box cars mentioned and described in the decree.

And also the share or proportion of the rolling stock and personal property purchased by the Receiver, as mentioned in the decree; and also, subject to other or previous liens or claims, the possession of the rolling stock on hand when the Receiver took the same under the order of the court, and it is further ordered by the court, that the said Receiver be and hereby is discharged as such from the management and control of the said western division of said railroad under appointment in this case, subject, however, to the final settlement of his accounts, and subject to the orders made, or to be made in this case, and in the other cases in which he was appointed or may hereafter be appointed.

And that thereupon and in pursuance of said order, said rolling stock was delivered to said respondents *Milwaukee* and St. Paul railway company as purchaser, as aforesaid, and from then until the making of said order of *July* 18th, 1865, remained in the exclusive possession of said railway company as the owner thereof under its purchase, as aforesaid, and not otherwise, and that said order of the 12th of *June*, 1863, remains in full force and unreversed. That said *Milwaukee* and St. Paul railway company was not and never has been a party to this suit, either complainant or defendant; that it was never impleaded in this cause in respect to this rolling stock, that no issue was ever formed relative thereto in this cause, and that said respondent *Milwaukee* and St. Paul railway company never had an oppertunity to established its rights thereto, or to contest the claim or rights of the said *Milwaukee* and *Minnesota* railroad company thereto in this cause, and that therefore the said order of *July* 18th, 1865, so far as it assumed to divest said respondent *Milwaukee* and St. Paul railway company of the possession or ownership, of said property, was as these respondents are advised and verily believe entirely without jurisdiction and void, and that if executed and enforced, it would operate to deprive the respondent *Milwaukee* and St. Paul railway company of its property without due process of law, your respondents therefore humbly and respectfully submit to this honorable court that said order of *July* 18th, 1865, so far as it required said respondent *Milwaukee* and St. Paul railway to deliver said rolling stock, so on said railroad when said Receiver took possesion thereof on the 11th day of *June*, 1860, and so as aforesaid delivered to said railroad company under the aforesaid order of the district court of *June* 12th, 1863, was without jurisdictson and void, and therefor not binding upon these respondents, and that a failure on their part to comply with its terms did not render them liable to be proceeded against as for a contempt of the order of this honorable court.

Sixth—Your respondents further show that at the time said order of the 18th of July, 1865 was made, there was a suit pending in this court, brought by the said Milwaukee and Minnesota railroad company against this respondent Milwaukee and St. Paul railway company and others, by way of supplemental bill to the aforesaid foreclosure suit of Bronson, Soutter and Knapp, in which said supplemental bill it was set forth, that the said respondent, the Milwaukee and St. Paul Railway Company was in the possession of all the rolling stock of which the Receiver took possession on the 11th day of June, 1860, claiming it as owner under said foreclosure purchase, and said supplemental bill, prayed among other things that said Milwaukee and Minnesota Railroad Company might be declared by the decree of this Honorable Court the owner of all the rolling stock that was on the whole La Crosse and Milwaukee Railroad at the time of the appointment of the Receiver, except forty box cars, specially mentioned and described, which said bill had then been answered by said respondent, Milwaukee and St. Paul Railway Company setting up its title under the foreclosure proceedings aforesaid, and was then at issue; that after the making of said order of the 18th day of July, 1865, your respondents learned of the existence of a certain supplemental mortgage executed on the 4th day of September, 1857, by the La Crosse and Milwaukee Railroad Company to said Bronson, Soutter and Knapp, in pursuance of the covenants for further assurance contained in said Land Grant Mortgage, and as a further security to the bonds issued under it, which said mortgage expressly mortgaged and conveyed to said Bronson, Soutter and Knapp, as trustees, all of said rolling stock on the La Crosse Railroad of which the Receiver took possession on the 11th day of June, 1860. And your respondents further show that there was a deficiency on the sale on said Land Grant foreclosure suit of Bronson, Soutter and Knapp, on the 25th day of April, 1863, amounting to $1,129,201, which amount still remains due and unpaid on said bonds with interest, and that the whole of said bonds and indebtedness secured thereby excepting the sum of about $25,000, were, on the 5th day of May, 1863, sold, assigned, transferred, and delivered, to said respondents, Milwaukee and St. Paul Railway Company, and ever since they have been, and now are, owned by said company in its own right, and that in virtue of said supplemental mortgage said Milwaukee and St. Paul Railway Company: if not the owner of said rolling stock by virtue of the sale on said foreclosure proceedings, was at least entitled to be regarded and treated as a mortgagee thereof, rightfully in possession, and that its possession could not be disturbed except by paying the balance due on said mortgage; that immediately on learning the existence of said supplemental mortgage, and at the September term, 1865, of this Honorable Court, your respondents, the Milwaukee and St. Paul Railway Company amended its answer to said supplemental bill, setting up said supplemental mortgage and its rights thereunder as a mortgagee in possession to said rolling stock, and at the same time filed a motion to modify said order of 18th July, 1865, founded on its petition setting forth said supplemental mortgage and the record in the cause, a copy of which said motion and petition are hereto attached as "Exhibit No. 2," and which your respondents pray may be taken and made a part of this answer, which said motion was still pending and undetermined in this court, until the present term of this court; and your respondents further show that James T. Soutter and Shepherd Knapp, survivors, &c., of Greene C. Bronson, deceased, trustees, have, by the leave of this Honorable Court, filed a cross bill to said supplemental bill to foreclose and enforce said supplemental mortgage, which is now pending for hearing at this term of this Honorable Court. Your respondents therefore submit that, as they are ad-

vised by their counsel, and verily believe, that if said order of July 18th, 1865, is binding and obligatory upon the respondent, Milwaukee and St. Paul Railway Co., in regard to said rolling stock, of which the Receiver took possession the 11th day of June, 1860, yet the facts and proceedings subsequently occurring were sufficient to excuse a compliance therewith by said Milwaukee and St. Paul Railway Company in respect to said rolling stock, and that its failure so to do is not contempt or disobedience of the orders of this Honorable Court.

Your respondents further show that on ——— day of November, the respondents, the Milwaukee & St Paul Railway Company, in due form of law, took an appeal from so much of said order of July 18th, 1865, as directed it to deliver to the Milwaukee & Minnesota Railroad Company the rolling stock which was on the LaCrosse & Milwaukee Railroad, when the Receiver took possession of the same on the 11th day of June, 1860, to the Supreme Court of the United States, and the same is now there pending as number 314 of December Term, 1865.

Your respondents further show that they were advised by their counsel and verily believe that said order of July 18th, 1865, so far as it related to the rolling stock on said road on the 11th day of June, 1860, was not binding and obligatory upon the respondents, the Milwaukee & St. Paul Railway Company, and that a surrender of said rolling stock so as aforesaid, in the possession of the Milwaukee and St. Paul Railway Company, might endanger or defeat its right thereto under its purchase on the land grant foreclosure as aforesaid and oust said railway company of its rights as mortgagee in possession under the said supplemental mortgage, and impair if not entirely defeat its claim by the foreclosure on the said cross bill of said supplemental mortgage, and that upon that advice and under the belief that its rights would be thereby impaired, if not lost your respondent, Milwaukee & St. Paul Railway Company declined to comply with the terms of said order of July 18th, 1865, so far as the same related to the rolling stock in its possession, which was on the road the 11th day of June, 1860.

But that your respondents, the Milwaukee & St. Paul Railway Company, from deference to this honoroble court, and in order that the interests of the public might not suffer during the pending of the litigation relating to said rolling stock, and in order that the said Milwaukee & Minnesota Railroad Company might be enabled to operate its said road, determined of its own motion to deliver as of its own property to said Milwaukee & Minnesota Railroad Company, sufficient of said rolling stock, with that purchased by the Receiver, belonging to the Eastern Division of said LaCrosse Railroad to enable said Minnesota Company to operate its road, and in pursuance of such determination, and in order that said railroad company might understand the position of your respondents, Milwaukee & St. Paul Railway Company replied to the demand of said Minnesota Company for the possession of said rolling stock, in writing as follows:

"EXHIBIT No. 6."

OFFICE OF THE MILWAUKEE AND ST. PAUL RAILWAY COMPANY,
Milwaukee. 186 .
MILWAUKEE, Jan. 29th, '66.

To the Milwaukee and Minnesota Railroad Company:

Your printed demand upon this company for the delivery to A. Fleming of all of the rolling stock mentioned in the order of July 18th, 1865, entered in the case of James T. Soutter, survivor, vs. La Crosse and Milwaukee railroad company and others in the circuit court of the United States for the District of Wisconsin, is this day received.

The rolling stock mentioned in said order purchased by the receiver, consisting of eight (8) locomotives, two (2) passenger cars, one (1) baggage car, six (6) caboose cars, and one hundred and thirty-four (134) house freight cars, has never been divided, but since the first day of May, 1864, has been in the joint possession of the receiver and of this company, and is owned jointly by this company and the East Division of said La Crosse and Milwaukee railroad.

The order of July 18th, 1865, requires the receiver to deliver a certain undivided proportion of said rolling stock to you, but provides no way or means of making a division or specifying the particular locomotives or cars to be delivered.

A portion of this stock has already been delivered to you by the receiver, to-wit: three (3) locomotives and a large number of cars. One of the locomotives is now at Portage subject to the order of the receiver, and the remaining four (4) are in our shops at Watertown undergoing repairs. Two of them will be at Portage this week under the contral of the receiver, and the cars on our line are being collected as rapidly as possible at Portage, so that the proportion belonging to the Eastern Division may be delivered by the receiver.

In order to enable the receiver to deliver to you in severalty the proportion of said rolling stock belonging to the Eastern Division, we have proposed to him a division thereof subject to future review and correction by the court or by the agreement of parties interested, and are ready to cooperate with him in making a fair and equitable division thereof.

We claim no interest in or control over the proportion of rolling stock purchased by the receiver, belonging to the Eastern Division, and will unite with the receiver in making a division of the stock so purchased, and furnish him every facility in our power, when divided, to make an immediate delivery thereof to you

The rolling stock, which was on the road June 18th, 1860, of which the receiver took possession, was by the order of the district court made on the 12th day of June, 1863, in the land grant foreclosure suit, taken from the receiver and delivered to this company as purchaser thereof under the land grant decree, and the receiver was as to said property discharged, since which time this company has been in the exclusive possession thereof. The title of this stock is now in litigation between this company and you, which litigation is not yet determined. No order has been entered therein disturbing our possession, whenever the court shall have disposed of the question there raised, and settle the title and ownership of said stock, we shall cheerfully conform to its decision.

In the meantime we would avoid so far as possible any inconvenience to the public or injury to you arising therefrom; we shall therefore furnish to you of said stock, sufficient to enable you, with your proportion of that purchased by the receiver, to operate your road.

To that end we have already delivered to you, as of our own property, nine (9) of said locomotives, together with passenger, mail, baggage and freight cars, which are now in your possession, and should the stock already furnished you by us, together with the proportion of that purchased by the receiver belonging to you, prove insufficient to operate your road, we will furnish in addition of said original stock, an ample and more than sufficient quantity for that purpose; and in case of a difference of opinion on the subject, we will submit to the decision of any suitable and impartial umpire you may name.

Further than this we do not propose to deliver to you any part or portion of said rolling stock so on said road on the 11th day of June, 1860, but claim the same as of right and legally and properly in our possession and under our control; and we are advised that the course above indicated is practically a full and complete compliance with said order of July 18th, 1865, so far as the same is obligatory or binding upon us.

Respectfully, yours,

S. S. MERRILL,
General Manager.

Your respondents further show that of the rolling stock which was on the road on the 11th day of June, 1860, of which the receiver took possession, there was in existence and in the possession of the Milwaukee & St. Paul Railway Company on the 4th day of January, 1866, the following, to-wit :

Engines	23
Box Cars	212
Flat Cars	77
Baggage do	6
Mail and Express do	3
Passenger Coaches	15

That of this stock the Milwaukee & St. Paul Railway Company on the said 29th day of January, 1866, and as soon thereafter as practicable at different times, with the view above stated delivered to the Milwaukee & Minnesota Rail Road Company the following, to-wit :

Engines	9
Box Cars	10
Flat do	24
Baggage do	3
Mail and Express do	3
Passenger do	6

and also at the same time delivered to said Milwaukee & Minnesota Rail Road Company thirty-eight box cars built or purchased by the Milwaukee and St. Paul Railway Company.

Your respondent further shows that there has been delivered to the said Milwaukee & Minnesota Company, by your respondents, Milwaukee & St Paul Railway Company and the said Receiver, from the different classes of rolling stock which was in the possession of the Milwaukee & St Paul Railway Company and said Railway Company and said Receiver on the 4th January, 1866, a total amount of rolling stock as follows, to-wit :

Engines	15
Box Cars	203
Flat do	24
Baggage do	4
Mail and Express do	3
Caboose do	6
Passenger do	8

and that exhibit No 3, hereto annexed contains a particular description of the rolling stock so delivered

That the road of said Milwaukee & Minnesota Rail Road Company is ninety-five miles in length, and that the rolling stock last above named is ample and sufficient for its operation and more than can be used thereon to advantage or than is required for the transaction of all the business done on said road or than ever has been furnished by the country tributary thereto, and that, as your respondents are informed and believe, the Milwaukee & Minnesota Company has suffered no damage or inconvenience from not having a larger amount of rolling stock.

Your respondents, further answering say that the whole of said rolling stock mentioned in the order of July 18th, 1865, was not required for the operation of the road of the said Milwaukee & Minnesota Company, and that it could not all be profitably used thereon, that the said road is encumbered with mortgages and judgments far beyond its real value, and that the nett income arising therefrom is insufficient to pay the interest on its mortgage debt, and that said said Milwaukee & Minnesota Railroad Company is insolvent and irresponsible, and that your respondents were apprehensive and had reason to fear, and did fear, that it was the intention of said Milwaukee & Minnesota Rail Road Company to remove a portion of said rolling stock from said road and dispose of the same beyond the jurisdiction of this honorable court and such your respondents now believe will be the case if the whole of said rollingstock should be placed in their possession and control, and your respondents, further answering, deny that they have been or are guilty of contempt of the orders or authority of this honorable court, or that they, or either of them ever designed or intended to disobey or contemn its authority, but that they were advised by counsel and verily believe that under the circumstances of the case, the said Milwaukee & St. Paul Railway Company were not required in equity and good conscience, or by the spirit and true intent of the order of July 18th, 1865, to make delivery of said rolling stock until the further order of this honorable court; that all your respondents verily believe that said Railway Company was

the owner of said rolling stock, and entitled to its possession, and that the delivery thereof to the Minnesota Company would work a great wrong and injury to said Milwaukee & St. Paul Railway Company, and seriously discommode the public while no good purpose would be thereby subserved.

Your respondents humbly submit that inasmuch as the ownership and title to said rolling stock is in dispute and unsettled, and can only be determined in the said cause brought and pending for that purpose, and said Minnesota Company is now in possession of all that and more rolling stock than can be used to advantage or profitably on its road; that instead of making another for enforcing the said order of July 18th, 1865, it would be safer, more equitable and tend more to preserve the rights of all parties that the court should make its order, requiring each of said companies to give security to be approved by this court, or a judge thereof, to abide by and perform the final order or decree of this court relative to said rolling stock, and to account for its use to the parties finally entitled thereto.

And your respondents humbly pray to be here dismissed with their reasonable costs wrongfully sustained.

MILWAUKEE, April, 12, 1866.

THE MIL. & ST. PAUL RY. CO.,
By ALEX. MITCHELL, Pt.,
AX. MITCHELL,
N. A. COWDREY,
S. MERRILL,
JOHN W. CARY.
DANIEL WELLS, JR.,
A. REASONER.

JOHN W. CARY,
Solicitor for Respondents.

DISTRICT OF WISCONSIN—ss

On this twelfth day of April, A. D. 1863 personally appeared before me, Alexander Mitchell, N. A. Cowdrey, Sherburne S. Merrill John W. Cary, Daniel Wells, Jr. and Andrew Reasoner, named in, and who have signed the foregoing answer, and severally made oath that they and each of them had heard read the said answer by them subscibed, and that they knew the contents thereof, and that the same is true of their own knowledge, except as to the matters therein stated to be upon their information and belief, and as to those matters they believed the same to be true.

J. M. MILLER
U. S. Commissioner, Dis't of Wisconsin.

EXHIBIT NO. I.

DISTRICT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF WISCONSIN.—IN EQUITY.

Green C. Bronson, James T. Soutter, and Sheppard Knapp,
vs.
The La Crosse & Milwaukee Railroad Company and others, defendants.

The answer of the Milwaukee and Minnesota Railroad Company, Lawrence G. Graham and Donald D. Scott, three of the defendants in the above entitled cause, to the petition of the Milwaukee and St. Paul Railway Company, filed in the above entitled cause on the 6th day of May A. D. 1863.

These defendants, saving and reserving unto themselves all, and all manner of benefit and advantage of exceptions to the many irregularities, uncertainties and insufficiencies of said petition, and protesting that this Court has no jurisdiction to hear said petition for answer thereunto, or unto so much and such part thereof, as is or are material to be by them then answered unto, answering, say:

That they have no knowledge, information, remembrance or belief, as to whether the

said Milwaukee and St. Paul Railway Company is a corporation, and can neither admit nor deny the same, but leave such petitioner to such proof in that behalf as it may be able to make.

These defendants admit that Hans Crocker is Receiver of the Eastern Division, so-called, of the Milwaukee and La Crosse Railroad so-called, but say that he was not appointed such Receiver in the above entitled cause, but was so appointed in a cause in favor of said Bronson and Soutter, as complainants against the La Crosse and Milwaukee Railroad Company and others defendants, which action was a suit in equity to foreclose a mortgage on said Eastern Division, and in a suit in favor of one Howard against said last named company and others.

The defendants deny that the said mortgage mentioned in the bill of complaint in this cause, mortgaged or created a lien upon the whole franchise of said La Crosse and Milwaukee Railroad Company to use, operate manage and control said La Crosse and Milwaukee Railroad for its entire length from the city of Milwaukee to the city of La Crosse, and deny that said mortgage is prior and superior to all or any claims, liens or incumbrances on said Eastern Division, and state that said mortgage did not, in terms nor was it intended to create any lien or incumbrance whatever upon said Eastern Division, of said Railroad, or of the franchise of said La Crosse and Milwaukee Railroad Company to use, manage, operate and control said Eastern Division, but that on the contrary thereof, the premises, as to franchises conveyed in said mortgage are conveyed only by the following words and description, that is to say: "And all and singular the rights, liberties, privileges and franchises of said Railroad Company, of every kind and description relating to said road," meaning the following roads, that is to say, from Madison by way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from Portage City to La Crosse.

And these defendants deny that said petitioner has in any way become entitled to use manage or operate said Eastern Division, of said railroad from Milwaukee to Portage or any part thereof.

These defendants further say that the said mortgage did not convey or mortgage, and was not intended to convey or mortgage any of the rolling stock of said La Crosse and Milwaukee Railroad Company, pertaining to said Eastern Division, and these defendants submit that rolling stock is not a franchise, and these defendants on information, advise and belief, state that there is no rolling stock covered by the said mortage, unless it be the 40 box cars mentioned in the order of the court upon the master's report.

MATT. H. CARPENTER,
Solicitor.

DISTRICT OF WISCONSIN—ss:

Alexander Fleming being first duly sworn, on oath, says that he is a director of the Milwaukee and Minnesota Railroad Company, one of the defendants in the above entitled cause, and makes this verification on its behalf: that he has heard read the foregoing answer, and knows its contents, and that the same is true, of his own knowledge.

A. FLEMING.

Subscribed and sworn to before me this 7th day of May A. D. 1863.

J. M. MILLER, Clerk.

Re-sworn to before me this 11th day of June, A. D. 1863:

EDWARD KENTZ,
U. S. Com. Dis't Wis.

And on the same day came the Milwaukee and Minnesota Railroad company, and Lawrence G. Graham and Donald D. Scott, by their solicitor, Mr Carpenter, and filed the following, viz:

DISTRICT COURT OF THE UNITED STATES.

FOR THE DISTRICT OF WISCONSIN.—IN EQUITY.

Green C. Bronson, James T. Soutter Knapp,

vs.

The La Crosse & Milwaukee Railroad Company and others.

Here in court comes the said Milwaukee and Minnesota Railroad company, Lawrence G. Graham and Donald D. Scott, and, protesting that the rights of the parties as to rolling stock, is already *res adjudicata* between the parties to this suit, and that this court has no jurisdiction over, or right to hear and determine the said petition of the Milwaukee and St. Paul Railway company, and protesting that a petition is not the proper proceeding to hear and determine the rights therein set forth:

Pray that, in case said Court shall be of opinion that it has such jurisdiction, and that said right as to rolling stock, claimed in said petition, is not already *res adjudicata* as aforesaid:

That it may be referred to a master or masters to take proofs as to the matter and things set forth, and the rights claimed in and by said petition to, and report thereon.

MATT. H. CARPENTER,

Solicitor for said defendants above named, except said La Crosse and Milwaukee Railroad Company.

EXHIBIT No. 2.

CIRCUIT COURT OF THE UNITED STATES,

FOR THE NINTH CIRCUIT AND DISTRICT OF WISCONSIN.

September Term, 1865.

JAMES T. SOUTTER, Survivor, &c.,

vs.

LA CROSSE AND MILWAUKEE RAILROAD COMPANY,

AND OTHERS.

Motion and Petition of Milwaukee and St. Paul Railway Company to modify the order of July 18th, 1865, entered in this cause on confirmation of the Auditor's Report relative to the delivery of the Eastern Division to the MILWAUKEE AND MINNESOTA RAILROAD COMPANY.

JOHN W. CARY,
For Motion.

CIRCUIT COURT OF THE UNITED STATES.

FOR THE NINTH CIRCUIT AND DISTRICT OF WISCONSIN.

JAMES T. SOUTTER, Survivor, etc.

vs.

LA CROSSE AND MILWAUKEE RAILROAD COMPANY, and others.

And now comes the Milwaukee and St. Paul Railway Company, by John W. Cary, its solicitor, and moves the Court now here for an order modifying the order of July 18th, 1865, entered on confirmation of the auditor's report on motion of the defendant, Milwaukee and Minnesota Railroad Company, by striking from said order the words following, to wit: "and the said Milwaukee and St. Paul Railway Company, its officers, directors, agents and employees."

Also the following words, to wit: "together with all the rolling stock that "was on the whole of the La Crosse and Milwaukee Railroad, or belonged "or appertained thereto, when the said Receiver was appointed, except "forty box cars, numbered as follows, viz:—330, 332, 334, 336, 338, 340, "342, 344, 346, 348, 350, 352, 454, 356, 358, 360, 362, 364, 366, 368, "370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, "398, 400, 402, 404, 406, 408," and insert in lieu of the portion last stricken out the words, "with all the appurtenances, rolling stock and other "property, real and personal, belonging to said division of said road," so

as to make the same conform to the mandate of the Supreme Court, and to the rights and equities of the parties, which motion will be founded on the petition of the Milwaukee and St. Paul Railway Company hereto attached, the record and proceedings in this cause, and the record and proceedings in the supplemental bill, and cross bill mentioned in said petition, and the following reasons are assigned for granting said motion.

1st. So that said order may conform to the mandate of the Supreme Court in this cause.

2nd. Because the Milwaukee and St. Paul Railway Company was not a party to this suit at the time of granting said order, and not subject or amenable to the orders of this court in this cause, and the same, as to said Company, is without jurisdiction and void

3rd. That said rolling stock was not within the jurisdiction and control of this Court in this cause, or subject to its order.

4th. Because said supplemental mortgage, mentioned in the annexed petition, covered and included this property, and its lien is prior and superior to the claim or right of said defendant Milwaukee and Minnesota Railroad Company.

5th. Because said Milwaukee and St. Paul Railway Company is entitled to be treated as a mortgagee in possession under said supplemental mortgage, on the facts stated in its petitition.

6th. Because, for the purposes of this proceeding, the title of the Milwaukee and St. Paul Railway Company, under the order of June 12, 1863, in the foreclosure suit of Bronson, Soutter and Knapp, mentioned in said petition cannot be questioned.

7th. Because said rolling stock was covered by and included in the Bronson, Soutter and Knapp mortgage of December 31st, 1850, the decree of the 13th of January, 1862, and the Marshal's sale and transfer to the Milwaukee and St. Paul Railway Company.

8th. Because said order is contrary to equity and good conscience.

JOHN W. CARY,

Solicitor, and of Counsel for Milwaukee & St. Paul Railway Company.

To the Honorable Judges of the Circuit Court of the United States, for the Ninth Circuit and District of Wisconsin:

Your petitioner, the Milwaukee and St. Paul Railway Company respectfully shows:

That on the 31st day of December 1856, the La Crosse & Milwaukee Railroad Company made their certain mortgage or deed of trust to Greene C. Bronson, James T. Soutter and Shepard Knapp, as trustees to secure bonds to be thereafter issued by said Company, whereby, they mortgaged to said trustees the line of their railroad and its appurtenances from Madison by way of Portgage City to St. Croix River or Lake, and from Portage City to La Crosse, together with all and singular, its locomotive engines, cars and rolling stock and personal property which had then been or might thereafter be procured for or used on said roads, or either of them, that under said mortgage four millions of dollars in amount of bonds were issued; that default having been made on said bonds, said trustees on the 5th day of December 1859 filed their bill in the District Court of the United States for the District of Wisconsin, to foreclose said mortgage or deed of trust, and such proceedings were thereafter had that Hans Crocker, Esq., was on the 18th day of May, 1860 appointed Receiver therein; that

he was subsequently on the 7th day of June 1860, appointed Receiver of the whole road, subject to his prior appointment in the case of Sebre Howard, and that on the 11th day of June, 1860 he took possession of the whole road by virtue of his said appointments. That such proceedings were thereafter had in said foreclosure suit that a final decree of foreclosure and sale was made on the 13th day of January, 1862, and afterwards, and on the 25th day of April 1863, the premises were sold by the Marshal, and the sale duly confirmed, and thereupon the purchasers formed your petitioner under and by virtue of the laws of the State of Wisconsin, and thereupon the whole mortgaged premises so sold were duly transferred to your petitioner as owners. That on the 25th day of April, said decree of foreclosure and sale amounted to the sum of $3,921,291; that the total proceeds of said sale were $2,800,000, and that after deducting said proceeds of sale from the amount due on said decree, there remained due and unpaid on said bonds secured by said mortgage as ascertained and fixed by said decree the sum of $1,129,201, and that said last amount with interest thereon, from the 25th day of April 1863, still remains due and unpaid on said bonds, and that the whole of said bonds and said indebtedness secured thereby, (excepting about the sum of $25.000, which is mostly in the hands of unknown owners, or the bonds, representing the same have been lost or destroyed) were on the said 5th day of May, 1863, sold, assigned, transferred and delivered to your petitioner, and ever since then have been and now are owned by your petitioner in its own right.

Your petitioner further shows that on the 6th day of May, 1863, your petitioner filed its petition to be let into the possession of the mortgage property so as aforesaid purchased by it, and in and by its petition specially referred to the proceedings in said foreclosure suit the sale and conveyance by the marshal and the subsequent conveyance to your petitioner, in and by which said sale and said conveyances all the rolling stock on said La Crosse road when the Receiver took possession thereof on the 11th day of June 1860, was sold, transferred and conveyed to your petitioner. That the defendant, Milwaukee and Minnesota Railroad Company, appeared and resisted the granting of said petition and filed an answer thereto specially denying the title of your petitioner to said rolling stock; that said petition was afterwards heard by the said District Court, and on the 12th day of June 1863, an order was made by said District Court directing said Receiver to let your petitioner into the possesion of said Railroad from Portage City to La Crosse, and all of said rolling stock that was on said road when the Receiver took possesion thereof, a copy of which order is hereto-annexed as exhibit No. 1. And your petitioner shows that it took said rolling stock under and by virtue of the aforesaid proceedings as the purchaser thereof; that it ever since has held and now holds said rolling stock as such purchaser claiming to be the owner thereof and insists that the proceedings aforesaid and especially the proceedings on said petition and the order so as aforesaid made are an adjudication upon the right, title and claim of the said defendant, Milwaukee and Minnesota Railroad Company to said rolling stock, and while it remains in full force and unreversed cannot be questioned or impeached by said defendant, Milwaukee and Minnesota Railaoad Company, in this suit or any other collateral proceeding.

Your petitioner further shows that it so being in the possession of said rolling stock, and claiming to be the owner thereof, the said defendant, Milwaukee and Minnesota Railroad Company, on the 11th day of August, exhibited its supplemental bill of complaint to said foreclosure suit in this Court against your petitioner, and James T. Soutter and Shepard Knapp,

survivors of Greene C. Brown, deceased, trustees as aforesaid, and William Wallace Pratt and William H. White, the purchasers at said foreclosure sale; that in and by said supplemental bill of complaint said defendant set out its title to the La Crosse and Milwaukee Railroad, its rolling stock and personal property by virtue of a mortgage given by said La Crosse and Milwaukee Railroad Company on the 21st day of June, 1858, to William Barnes. The foreclosure thereof and sale under the power and the organization under the statute of Wisconsin, by the purchaser at said sale of the said defendant, Milwaukee and Minnesota Railroad Company; and that thereby said last named Company succeeded to all the property, rights, privileges and franchises which were of the said La Crosse and Milwaukee Railroad Company on the 21st day of June, 1858; said supplemental complaint then set forth the foreclosure proceedings first above mentioned and the organization of your petitioner. That your petitioner was in the possession of all the rolling stock, of which the Receiver took poseession on the 11th day of June, 1860, claiming it as owner under said foreclosure purchase and organization as aforesaid, and then prayed, among other things, that said defendant Milwaukee and Minnesota Railroad Company, might be declared by the decree of this honorable Court the owner of all the rolling stock that was on the whole La Crosse and Milwaukee Railroad at the time of the appointment of the Receiver, except forty box cars specially mentioned and described, and that an account might be taken of the use of said rolling stock by said Milwaukee and St Paul Railway Company, and that said last named Company might be enjoined from using or in any manner interfering with said rolling stock, and for general relief.

That process of subpœna was issued out of and under the seal of this honorable Court, and such proceedings had that the defendants named in said supplemental bill of complaint appeared in said suit and answered, and the same is now pending and undetermined in this Court, as by the said bill and other pleadings and proceedings in the said cause now remaining filed as of record in this Court, reference being thereunto had, will more fully and at large appear, and to which, for greater certainty, your petitioner prays leave to refer.

Your petitioner further shows that, as it is advised and believed, said mortgage so as aforesaid given to said Bronson, Soutter & Knapp, was intended to cover, and in fact did cover, and include all of the locomotives, cars, engines, tools and personal property which the said La Crosse & Milwaukee Railroad Company then had, or which they might thereafter acquire, and that it did in fact cover and include, and was intended to cover and include, all the rolling stock and equipments which were on the road of said Company on the 11th day of June, 1860, of which the Receiver took possession; yet, that after the giving of said mortgage said Company became embarrassed in its financial operations, and some doubt and apprehension were felt by the bondholders under said mortgage, as to whether said mortgage did in fact cover and include all the iron, locomotives, cars, engines, tools and other personal property belonging to said company, and in order to solve said doubt, and to secure said property to the bondholders holding bonds issued under said mortgage, so as aforesaid executed, application was made to the said La Crosse and Milwaukee Railroad Company to execute a supplemental mortgage thereon to said trustees as aforesaid, for the further security of said bonds. That in pursuance of said request, and of the covenants and agreements contained in said indenture and Mortgage so as aforesaid given to said trustees, said La Crosse and Milwaukee Railroad Company did, on the 4th day of September, in the year 1857, by resolution of its

Board of Directors, authorize and direct the execution of such supplemental mortgage, and afterwards and on the same day, said La Crosse and Milwaukee Railroad Company, in pursuance of said resolutions, and in consideration of the premises, and of one dollar to it in hand paid by said trustees, did grant, bargain, sell, convey and confirm unto said trustees, Bronson, Soutter and Knapp, all and singular, about eleven thousand tons of iron rails, being all the iron rails purchased for and belonging to the said Company, and lying at Milwaukee and elsewhere, along the line of the road of said Company, or wherever the same, or any portion thereof, might be, and not actually laid down on the track thereof, and all and singular, the locomotives, cars, engines, tools, materials, lumber, office furniture and personal property of every description, belonging to the said Company, wherever the same might be: To have and to hold the same to said trustees, their successors and assigns upon the like trusts, terms and conditions, as are in the said mortgage or trust deed of December 31st, 1856, contained, with all, the powers and authority therein granted, which said mortgage or deed of trust so as aforesaid executed, was afterwards, and on the fifth day of September, 1857, duly recorded in the office of the Secretary of State of the State of Wisconsin, as a mortgage, a copy of which said mortgage, and the resolution passed by the Board of Directors of said La Crosse and Milwaukee Railroad Company, authorizing the execution thereof, is hereto attached as exhibit No 2.

That at the time of the execution of said mortgage, on the 4th day of September, 1857, but $1,991,000 in amount of bonds had been issued under said mortgage of December 31st. 1856, and that after the execution, delivery and record of said mortgage of September 4th, 1857, there was issued the further amount of bonds under said mortgages of $2,009,000, making in all issued under said mortgage the sum of $4,000,000.

That on the said 4th day of December, 1857, said La Crosse and Milwaukee Railroad Company was the owner and in the possession of about eleven thousand tons of iron rails and of all the locomotives, cars, engines, tools and personal property mentioned and described in the said bill of complaint, of which said Hans Crocker, Esq., took possession, as Receiver, on the 11th day of June, 1860; and that in and by said last mentioned mortgage or deed of trust, the whole of said iron, locomotives, cars, engines, tools and personal property were conveyed to said trustees as security for the payment of the bonds issued under the mortgage or deed of trust so as aforesaid given to said trustees, and bearing date December 31st, 1856, as aforesaid; that said iron rails were afterwards laid in the track of said Railroad, a part thereof on the Eastern Division and the remainder on the Western Division, and said rolling stock and other property was, from the giving of said mortgage of September 4th, 1857, until it was taken possession of by the said Receiver, used on said road from Milwaukee to La Crosse, and that said mortgage last named is now, and ever since has been, a lien and encumbrance thereon, to the full amount of said bonds now remaining unpaid.

Your petitioner further shows that, in its answer to said supplemental bill of complaint, it has set up its right and title to said rolling stock under said mortgage so as afaresaid, gvien by Bronson, Soutter and Knapp, on the 31st day of December, 1856, the foreclosure thereof and sale by the Marshal, and organization and conveyance to your petitioner and the aforesaid order of the said District Court, giving your petitioner the possession thereof, under said foreclosure sale and purchase; and that in addition thereto your petitioner has set up the supplemental mortgage so as aforesaid given to said trustees, that your petitioner is the owner of all the bonds issued under said

mortgage so as aforesaid given on the 31st day of December, 1856, except the sum of about $25,000 in amount, and that the amount due and unpaid on said bonds, as fixed by said decree, is the sum of about $1, 29,201, with interest from April 25th, 1863; that your petitioner is in possession of all the rolling stock of which the Receiver took possession on the 11th day of June, 1860, under the aforesaid order of the District Court, made June 11th 1863, and that all of said rolling stock was owned by and belonged to said La Crosse & Milwaukee Railroad Company on the 4th day of September, 1857, when said mortgage of that date was made by said Company; and that under the circumstances your petitioner must be regarded and treated as a mortgagee in possession of said property, and that its possession thereof cannot be disturbed by the defendant, Milwaukee & Minnesota Railroad Company, except by a bill to redeem said property from said mortgage.

That said James T. Soutter and Shepard Knapp, survivors of Greene C. Bronson, trustees have answered said supplemental bill of complaint setting up the mortgage or deed of Trust of December 31st 1856, the foreclosure thereof, the Marshals sale, the organization of and transfer to your petitioner and the aforesaid order of the District Court placing your petitioner in possession; and also setting up said mortgage or deed of trust of September 4th, 1857, their rights under the same, that said La Crosse & Milwaukee Railroad Company were the owners of all the rolling stock of which the Receiver took possession on the 11th day of June 1860, and now in the possession of your petitioner, on the fourth day of September 1857, when said mortgage or deed of trust of that date was executed, and insisting that if said rolling stock was not included in the decree of January 13th 1862, and sold by the Marshal on the 25th of April, 1863, that it is covered by and included in the mortgage of September 4th 1857 aforesaid, and should be subjected to the payment of the balance remaining due and unpaid on the bonds so as aforesaid issued under the mortgage of December 31st 1856. And that said Soutter and Knapp as survivors of said Greene C. Bronson, trustees, have also filed a cross bill to said supplemental bill, setting up the matters contained in their answer aforesaid, that by the mistake or inadvertance of the counsel who drew and prepared the original bill of foreclosure of the mortgage of December 31st 1856, and without the knowledge of said trustees, said mortgage of the 4th of September 1857 was not pleaded or set up in said bill of foreclosure, and that it has never been foreclosed, that it now remains in full force, uncancelled and unsatisfied, and is a lien upon all of said rolling stock, prior and superior to the right or claim of said Milwaukee & Minnesota Railroad Company, and praying for a foreclosure of said mortgage and for other relief.

That said supplemental bill, the answers thereto, and said cross bill, are now pending and undetermined in this Court, as by the record of said suit and the proceedings therein now remaining of record in this Court, reference being thereunto had will more fully and at large appear, and to which, for greater certainty, your petitioner prays leave to refer.

Your petitioner further shows that it is not a party, either complainant or defendant in this action, as was decided by this Court at the April term, 1864, and that it has no connection with or relation to it, except what arose from and grew out of the order of the 12th of June, 1863, entered by the said District Court in this cause and in this Court in the case of Sebre Howard vs. La Crosse and Milwaukee Railroad Company and others, and in the case of Bouton vs. the same Company and others, modifying the order appointing Hans Crocker, Esq., Receiver in said causes, so as to allow your petitioner to operate the Eastern Division of the La Crosse and Milwaukee

Railroad, a copy of which order is hereto annexed as Exhibit No. 3. That under and by virtue of said orders your petitioner was let into the possession of said Eastern Division of said La Crosse and Milwaukee Railroad, and of that portion of the rolling stock purchased by the Receiver belonging to said Eastern Division, but of no other property or rolling stock whatever; and from and after the 12th day of June, 1863, until the first day of May, 1864, your petitioner, under and by virtue of said orders, operated said Eastern Division of said railroad as aforesaid, when said orders were rescinded by this honorable Court; and thereupon your petitioner returned said road and rolling stock as aforesaid received to said Hans Crocker, Receiver.

Your petitioner further shows that on the 28th day of April, 1864, an order was entered in this cause, as follows, to wit:

"This day ordered by the Court, that the receiver file in this Court a continuous monthly account of his receipts and disbursements as Receiver from the time of his appointment, including the receipts and disbursements of the Milwaukee and St. Paul Railway Company from the 12th of June, 1863, by the first day of June next, and that any person interested may examine the same and file exceptions thereto. And that H. L. Palmer, Esq., be and is appointed an auditor to report on the same to the next term of this Court"

That in pursuance of said order said Receiver filed his continuous monthly account of his receipts and disbursements, including the receipts and disbursements of your petitioner, and that said report was excepted to, and that your petitioner appeared before said auditor to maintain said account so far as it related to your petitioner, but for no other purpose whatever; and that afterwards your petitioner appeared before this honorable Court for the same purpose and filed exceptions to the report of said auditor, but that your petitioner never made any other appearance in this cause, and never had any other connection therewith, except as above; that there were no pleadings before said auditor, or in this Court, so far as your petitioner was concerned, and no issue as to your petitioner's right and title to said rolling stock, and no opportunity for your petitioner to contest the claims of said Milwaukee and Minnesota Railroad Company to said stock, or to establish and maintain the rights and claims of your petitioner.

That said supplemental bill and cross-bill, and the answers thereto put that question directly in issue, and that that proceeding is the proper forum for the contestation of that title, but that it cannot be litigated in this suit.

Your petitioner further shows that said auditor reports that the order of the 12th of June, 1863, hereto attached as Exhibit No. 1, still remains in full force, and not reversed or rescinded, and that said rolling stock remained in the possession of your petitioner by virtue thereof:—and then further reports "that under the adjudications made by the District and Circuit Courts in this case, and in the case of Bronson, Soutter and Knapp against the La Crosse and Milwaukee Railroad Company, and others, and by the Supreme Court of the United States in the case of the Milwaukee and Minnesota Railroad Co., vs. James T. Soutter, survivor, &c., that all of said rolling stock that was on said road on the 11th day of June, 1869, except forty box cars, belongs to the owners of the eastern division of said road; and further reported, that your petitioner should pay to said receiver the sum of $209,840 94 for the use of said rolling stock;" and that your petitioner excepted to said finding as to the ownership of said rolling stock, and to the amount reported as due the receiver for the use thereof, which exceptions were overruled, and your petitioner thereupon appealed to the Supreme Court and procured a supersedeas thereon.

And your petitioner further shows that on the confirmation of said report, the defendant, Milwaukee and Minnesota Railroad Company, procured an order to be entered in pretended compliance with the mandate of the Supreme Court, which your petitioner shows is not in compliance with said mandate, and as your petitioner is advised and believes is arbitrary and unjust, and improvidently and unadvisedly granted. That said mandate directs "that, in case the amount due the complainants be paid into Court, the "Receiver should be discharged, and the railroad from Milwaukee to Portage City with all the appurtenances, rolling stock and other property, real "and personal, belonging to said division of said railroad to be delivered by "said Receiver to the Milwaukee and Minnesota Railroad," upon certain conditions.

But said order, notwithstanding your petitioner was not a party to said suit, directs not only the Receiver but your petitioner to deliver the Eastern Division and its appurtenances and rolling stock, but also the rolling stock and property delivered to your petitioner, under its aforesaid purchase and which your petitioner claims to own in its own right, and which, if your petitioner does not absolutely own in its own right, it is entitled to the possession of as mortgagee in possession as above set forth. Your petitioner was advised and believed, and is still advised and believes, that its appeal so as aforesaid taken, and the supersedeas allowed thereon operated as a stay, not only of the payment of the money so reported due the Receiver, but also of the delivery of said rolling stock; but that it is now informed that said defendant (Milwaukee and Minnesota Railroad Company) insists that in case it pays the amount due the complainant that it will be entitled to the delivery to it of all the rolling stock which was on said railroad when the Receiver took possession thereof, except forty box cars specially mentioned; and your petitioner shows that said order is being unjustly and improperly used with a view to injury and oppress your petitioner, and with that view said Milwaukee and Minnesota Railroad Company have caused to be published in two of the daily newspapers of Milwaukee, and in the papers of Chicago and New York, the false, scandalous and malicious libel and notice hereto attached and marked Exhibit No. 4.

Your petitioner therefore prays that said order of July 18th, 1865, entered on the confirmation of said auditor's report, on motion of the defendant Milwaukee and Minnesota Railroad Company, may be modified by striking from said order the words following, to-wit: "and the said Milwaukee "and St. Paul Railway Company, its officers, directors, agents and employees."

Also the following words, to-wit: "together with all the rolling stock, "that was on the whole of the La Crosse & Milwaukee Railroad, or belonged "or appertained thereto, when the said Receiver was appointed, except "forty box cars, numbered as follows, viz: 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384. 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408," and insert in lieu of the portion last stricken out the words, "with all the appurtenances, rolling stock and other property, real and personal, belonging to said Division of said road" so as to make it conform to the mandate of the Supreme Court and to justice and equity between the parties.

Your petitioner further shows, that but a small part of said rolling stock in addition to that purchased by the Receiver and belonging to said Eastern Division could be advantageously used on said Eastern Division, while there is great and pressing need for its use on your petitioner's road, and that its

removal therefrom would greatly discommode the public, and be a great and serious damage, not only to your petitioner, but to the whole community who are dependant on your petitioner's railroad to transact their business and market their crops.

And your petitioner, as in duty bound, will ever pray, &c.

JOHN W. CARY,

Solicitor and of Counsel for Petitioner.

DISTRICT OF WISCONSIN—ss.

On this day of September, A. D. 1865, personally appeared before me, Alexander Mitchell, and made oath that he is one of the officers of the Milwaukee and St. Paul Railway Company, the petitioner named in the foregoing petition, to-wit; its President, that he has heard read said petition, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be upon the information and belief of said petitioner, and as to those matters, he believes it to be true.

EXHIBIT No. 1.

Order of June 12th, 1863.—In Western Division.—Foreclosure Cause.

UNITED STATES OF AMERICA, } ss.
DISTRICT OF WISCONSIN }

At a stated term of the District Court of the United States of America, for the District of Wisconsin, begun and held according to law, at the City of Milwaukee, in said District of Wisconsin, on the first Monday (being the fifth day) of January, A. D. 1863, present the Honorable Andrew G. Miller, Judge of said Court, presiding.

On the 18th day of said term, to-wit, on the 12th day of June, A. D. 1863, the following proceedings were had, to-wit:

Greene C. Bronson, James T. Soutter and Shepherd Knapp, Trustees, *vs.* La Crosse & Milwaukee Railroad Company, J. Albert Helfenstein, Trustee, *et als.* In Equity.

On consideration of the said petition of the Milwaukee & St. Paul Railway Company, and of the arguments of counsel, it is ordered by the Court that there be delivered over to the said Milwaukee & St. Paul Railway Company all and singular the railroad between the city of La Crosse and Portage City, its road-bed and tracks with its depots, station houses, and all other property belonging to said Railroad between the said points; and the forty box cars mentioned and described in the decree.

And also the share or proportion of the rolling stock and personal property purchased by the Receiver, as mentioned in the decree. And also, subject to other or previous liens or claims, the possession of the rolling stock on hand when the Receiver took the same under the order of the Court, and it is further ordered by the Court, that the said Receiver be and hereby is discharged as such from the management and control of the said Western Division of said railroad under appointment in this case, subject, however, to the final settlement of his accounts, and subject to the orders made or to be made in this case and in the other cases in which he was appointed or may hereafter be appointed.

EXHIBIT No. 2.

At a meeting of the Board of Directors of the La Crosse and Milwaukee Railroad Company, held at the office of the Company, in the City of Milwaukee, on the 4th day of September, A. D. 1857, the following proceedings were had.

Mr. Palmer presented the following additional deed of trust and resolution, authorizing the execution of the same by the President and Secretary, which resolution was adopted by the Board.

Resolved, that the President and Secretary be authorized and directed to execute to Greene C. Bronson, James T. Soutter and Shepherd Knapp, in behalf of this Company a further deed of trust or mortgage of which the following is a copy, viz:

This indenture made and entered into this 4th day of September, in the year of our Lord, one thousand eight hundred and fifty-seven, between the La Crosse and Milwaukee Railroad Company, a corporation created by the Legislature of the State of Wisconsin, parties of the first part, and Greene C. Bronson, James T. Soutter and Shepherd Knapp trustees, all of the City and State of New York, parties of the second part.

Whereas the said parties of the first part did on the 31st day of December in the year one thousand eight hundred and fifty-six, duly execute and deliver to the said parties of the second part as trustees, a deed of trust, bearing date on that day, wherein and whereby the said parties of the first part, for the purpose of securing the payment of certain monies which the party of the first part had determined to borrow.

Stipulated and provided for the issue of the bonds of the said La Crosse and Milwaukee Railroad Company, for ten million of dollars of the date, tenor and description in the said deed of trust, particularly set forth and

payable principal and interest as therein provided, and whereas the said Railroad Company in and by the said deed of trust granted, bargained, sold, conveyed and confirmed unto the said parties of the second part all and singular the several tracts of land which then was or thereafter might be or constitute the site of the roadway, turnout, engine houses, workshops, depots and other buildings of the said Company and other lands, buildings and estate and property, real and personal and mixed therein specially and particularly described, which conveyance was in and by the said deed of trust, declared to be and was made to the said parties of the second part, and the survivors and survivor, successors and successor of them and their and his heirs and assigns in trust and upon the trusts terms and conditions therein particularly expressed.

And whereas the said parties of the first part did, in and by the said deed of trust, covenant and agree to and with the said trustees, the said parties of the second part, that the said Railroad Company would from time to time during the continuance of the trust, make, execute, cause to be duly recorded, and deliver to said trustees, or to their successors in the said trust, all such further conveyances and assurances, and would do all such further acts as might be either necessary or proper for more effectually vesting in the said trustees all such right, title, interest or estate, both legal and equitable as said Railroad Company then had or may thereafter acquire of, in and to all and every part of the property thereby conveyed, or intended to be conveyed.

And whereas the said Railroad Company had, at the time of the execution of the said deed of trust, or have since, acquired certain property which was conveyed or intended to be conveyed thereby, and of which a further conveyance is deemed proper for more effectually vesting in the said trustees all the title, right, interest and estate, legal or equitable, which the said Company then had or have since acquired thereby, (therein).

Now, therefore, know all men by these presents, that the said parties of the first part, in pursuance of the covenants and stipulations in the said deed of trust contained, and in consideration of the premises, and of one dollar to them in hand paid by said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, conveyed and confirmed, and by these presents do grant, bargain, sell, convey and confirm unto the said parties of the second part all and singular about eleven thousand tons of iron rails, being all the iron purchased for and belonging to the said Company, and lying at Milwaukee and elsewhere along the line of the road of the said Company, or wherever the same or any portion thereof may be and not actually laid down in the track thereof, and all and singular the locomotives, cars, engines, tools, materials, lumber, office furniture, and personal property of every description belonging to said Company wherever the same may be.

To have and to hold all and singular the property hereby conveyed or intended to be conveyed to the said parties of the second part, and the survivors or survivor of them, their successors and successor, and their and his heirs and assigns, upon the like trust terms, trusts and conditions as are in the said deed of trust contained, and all the power and authority granted to the said parties of the second part, in and by the said deed of trust, in relation to the property conveyed thereby, and in relation to the sale, conveyance and disposal thereof, and in relation to the disposition and application of the proceeds of such property in case of sale, are hereby conferred upon, granted to, and vested in, the said parties of the second part, in relation to the property hereby conveyed, as fully and effectually as if the property

hereby conveyed, had constituted a part of the roadway of the said Company, described in the said deed of trust, at the date thereof.

And the said parties of the second part are hereby charged with all the duties in relation to the property hereby conveyed and the sale and disposition thereof, and of the proceeds thereof, in case of sale thereof with which they are charged in relation to the property conveyed or intended to be conveyed by the said deed of trust; and the said parties of the second part may, and they are hereby authorized and required to treat the property hereby conveyed in the same manner, and to hold the same upon the same terms, trusts, and conditions, and for the same purposes as the property mentioned in the said deed of trust, and not otherwise, and may take possession thereof, and sell and dispose of the same in the same manner, at the same time, and upon the same conditions, as they may take possession of and sell and dispose of the property in the said deed of trust mentioned, and as a part thereof, and not otherwise; and it is hereby declared to be the object and intention of these presents and of the parties hereto to subject the property hereby conveyed, or intended to be conveyed, and every part thereof to the operation of said deed of trust, and each and every stipulation and covenant therein contained as fully and effectually to all intents and purposes, as if the said property hereby conveyed or intended to be conveyed had at the time of the execution of the said deed of trust constituted a part of the property thereby conveyed, and had been embraced in and conveyed thereby.

In witness whereof, the said Railroad Co., has hereto affixed its corporate seal, and caused the same to be subscribed by its President and Secretary, in the day and year first above written.

[L. S.]

In presence of
H. M. PEABODY,
E. P. WHALING.

BYRON KILBOURN, President.
J. HADLEY, Sec. of the R. R. Co.

STATE OF WISCONSIN, } ss.
MILWAUKEE COUNTY. }

On the 4th day of September, in the year one thousand eight hundred and fifty-seven, before me came Byron Kilbourn, the President of the La Crosse & Milwaukee Railroad Company, with whom I am personally acquainted, and who, being by me duly sworn, says that he resides in the city of Milwaukee, in said county, and that he is President of the La Crosse & Milwaukee Railroad Company, that the seal affixed to the foregoing indenture is the common and corporate seal of the said Railroad Company, and was affixed to the said indenture by order of the Board of Directors of said Company, for the uses and purposes therein expressed, and that he, by like order, did subscribe his name thereto as President of said Company, and that Jackson Hadley, as Secretary of said Company, subscribed his name thereto by like order and authority.

H. L. PALMER,
Notary Public,
Milwaukee County,

and to affix thereto the corporate seal of the Company, and to cause the same to be recorded in the office of the Secretary of State, and to file copies thereof whenever necessary to render the same an effective security, and to deliver the same when so executed and recorded to the said Trustees.

EXHIBIT No. 3.

Order June 12, 1863, *in Eastern division foreclosure cause, putting Milwaukee and St. Paul Railway Company in possession, and order of April* 28, 1864, *vacating the same.*

United States District Court.

GREENE C. BRONSON AND JAMES T. SOUTTER
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY and others.

June 12th, 1863.—A petition in writing of the Milwaukee and St. Paul Railway Company having been presented to the Court and filed in the case of Greene C. Bronson, James T Soutter, and Shepherd Knapp, against the La Crosse and Milwaukee Railroad Co. and others, setting forth in substance that in pursuance of a decree of this Court in that case, the western division of the La Crosse and Milwaukee Railroad between La Crosse and Portage City, has been sold, and that said sale was confirmed and perfected; and that said Milwaukee and St. Paul Railway Co., is a corporation organized under the laws of the State, as grantees under said sale, and praying to be allowed to operate the whole line of road between La Crosse and Milwaukee as a continuous road, as directed and authorized by the act incorporating the La Crosse and Milwaukee Railroad Co.; and the said petition having been argued by Messrs. Cary and Lynde in support thereof, and by Messrs. Hubbell and Carpenter on behalf of Charles Howard, a judgment creditor of the La Crosse and Milwaukee Railroad Co., who is prosecuting a judgment creditor's bill, and of the Milwaukee and Minnesota Railroad Co., in opposition thereto; and the Court being satisfied that the policy of the State and the interests of the public and of the creditors of the La Crosse and Milwaukee Railroad Co. require that the Court should not continue further to operate, by its Receiver, any part of the said railroad between La Crosse and Milwaukee, but that the whole line of said road should be operated without interruption or embarrassment by a responsible corporation; and the Court being satisfied that its possession and control by a receiver of the eastern division, between Portage City and Milwaukee, might affect the rights of the public, and embarrass the free and proper operation of the whole road as required by the original grant or charter, and also prejudice the interests of creditors of the La Crosse and Milwaukee Railroad Company; and it being represented to the Court that persons interested in the Milwaukee & St. Paul Railroad Co. own or control bonds included in the mortgage to these complainants, and the subject of this suit, to the amount of four hundred and seventy-eight thousand dollars, being nearly one-half of the whole amount of said mortgage—

It is thereupon ordered by the Court that the order appointing a Receiver in the case be modified in the manner following, subject to any further or other order rescinding, altering or modifying this order now here made that the Receiver let the said Milwaukee & St. Paul Railway Co. into the possession of the Eastern Division of the La Crosse and Milwaukee Railroad from Portage City to Milwaukee, with the appurtenances and property and rolling stock thereto belonging; and that the said Milwaukee & St. Paul Railway Company, subject to the further order or orders of the said Court, operate said Eastern Division of said railroad in connection with the said Western Division thereof, so that one continuous line of railroad between

La Crosse and Milwaukee may be operated and conducted as directed in the original charter of the La Crosse & Milwaukee Railroad Co., without hindrance, interruption, or diversion, the same as if the whole line of road continued to be in one company in pursuance of said charter, and not otherwise.

And it is further ordered by the Court that the said Milwaukee and St. Paul Railway Co. shall at all times allow and permit the receiver, or such other persons as may be at any time appointed for that purpose, to have daily access and examination of the records, books, papers, accounts, proceedings, receipts and revenues, and also of the transactions of the said Milwaukee and St. Paul Railway Co., and of its board of directors, in relation to the business and operation of the whole line of road, and that the said Railway Co. shall, out of the revenues of said road, keep the said eastern division and all the rolling stock in good order, and defray all running and other necessary expenses, and at the end of every month deliver to the said receiver, or such other person as may be appointed, a full and detailed account of all revenues arising on the whole road, and of all necessary disbursements out of the same, and pay over monthly to the receiver the proportion of the said eastern division of the net revenues of the said railroad; and that the said receiver make monthly returns as heretofore of his accounts into court, and disburse the moneys by him received from time to time in the payments of liens and debts of the said La Crosse and Milwaukee Railroad Co., according to their priorities and equities.

And it is further ordered by the Court that before the said Milwaukee & St. Paul Railway Co. be permitted to have possession under this order the said company, by its constituted officers, shall enter into bond to the United States for the use and benefit of all interested, with sureties to be approved by the Court, in the penalty of one hundred thousand dollars, conditioned that the said company will faithfully comply with this order of Court this day made, and any subsequent orders relating to the operation and management of said railroad between La Crosse and Milwaukee, and will keep said road and the rolling Stock and property in good order, and shall manage and conduct the same to the best advantage of the public and the creditors of the La Crosse and Milwaukee Railroad Co., and shall make monthly returns and pay over the net revenues of said road, according to this order.

EXHIBIT No. 4.

NOTICE

To all Railroad Companies, Owners or Manufacturers of Rolling Stock, and all others whom it may concern:

OFFICE OF THE MILWAUKEE & MINNESOTA RAILROAD COMPANY,
New York, August 12th, 1865.

Take notice, That whereas, at the July term of the United States Circuit Court for the District of Wisconsin, held in the city of Milwaukee, orders were made by the said Court in obedience to the mandate of the Supreme Court of the United States, directing all the rolling stock, (except forty box cars) that was on the road of the La Crosse and Milwaukee Rail-

road Company, when the receiver took possession of the same, and also the Eastern Division of said road, to be delivered to the Milwaukee and Minnesota Railroad Company, on the payment of certain interest—the said rolling stock and the said Eastern Division being now in the possession of parties styling themselves the Milwaukee & St. Paul Railway Company: AND WHEREAS, the said Milwaukee and St. Paul Railway Company has been, since the first day of September, 1864, using the said rolling stock to divert the travel and traffic to a competing route to the great injury of the Milwaukee and Minnesota Railroad Company, owner of the said rolling stock and the Eastern Division: AND WHEREAS, a suit for damages against the Directors of the said Milwaukee & St. Paul Railway Company has been commenced by the Milwaukee and Minnesota Railroad Company, and said last named company will shortly in obedience to the orders above mentioned, pay into court the interest as directed, and take possession of the said rolling stock and road, in which event the said Milwaukee and St. Paul Railway Company will be left with little or no equipment, and threatens to lease its road, or lease, or hire, or in some other way procure rolling stock to be employed in the transportation of freight and passengers over the road formerly known as the Western Division of the La Crosse and Milwaukee Railroad, and thence by way of Watertown to Milwaukee, thus diverting the travel and traffic from the road of the Milwaukee and Minnesota Company, *the successor to, and owner of all the rights, liberties, privileges, and franchises of the late La Crosse and Milwaukee Railroad Company*, and as such successor and owner, *alone legally entitled* to the exercise of the rights, liberties, privileges, and franchises, *particularly the transportation of freight and passengers over the said Western Division from La Crosse to the City of Portage*, and from thence by way of the road known as the Eastern Division of the late La Crosse and Milwaukee Railroad Company, to the city of Milwaukee: *Now, therefore, notice is hereby given* to all Railroad Companies, owners or manufacturers of rolling stock, and all whom it may concern, that the Milwaukee and Minnesota Railroad Company, as *sole owner of the franchise to run through trains on the said Western Division*, will hold all parties leasing or hiring to the said Milwaukee and St. Paul Railway Company, or in any manner aiding or abetting said last named Company in infringing on the legal rights of the Milwaukee and Minnesota Railroad Company, owner of the franchises, by furnishing rolling stock to be used as aforesaid, as jointly liable with the said Milwaukee and St. Paul Railway Company for all damages to the Milwaukee and Minnesota Railroad Company, occasioned by the diversion of the traffic and travel from its lawful channel over the road of the aforesaid Milwaukee and Minnesota Railroad Company.

By order of the Executive Committee.

A. C. GUNNISON, President.

EXHIBIT No. 3.

Detailed Statement of Rolling Stock Delivered to Milwaukee and Minnesota Railroad Company.

Engines Nos. 1, 2, 7, 10, 11, 12, 14, 16, 20, 22, 24, 25, 29, 30, 31-36, New No.—15.

Baggage Cars—Nos. 1, 4, 6, 7—4.

Mail and Express Cars—Nos. 1, 2, 3—3.

Caboose Cars—Nos. 1, 2, 3, 4, 5, 6,—6.

Passenger Coaches—Nos. 1, 7, 13, 15, 17, 18, 19, 20—8.

Platform Cars—Nos. 9, 245, 37, 297, 231, 83, 7, 109, 77, 157, 223, 117, 93, 143, 161, 101, 107, 187, 119, 85, 23, 149, 97, 121—24.

Box Cars—Nos. 10, 524, 602, 674, 744, 828, 1206, 102, 526, 604, 676, 750, 830, 1210, 134, 534, 606, 678, 754, 832, 1238, 138, 542, 608, 682, 756, 834, 1230, 170, 546, 610, 684, 758, 838, 1242, 214, 548, 612, 686, 760, 842, 1286, 242, 550, 614, 688, 762, 844, 1290, 252, 552, 616, 690, 766, 846, 1320, 318, 554, 618, 692, 768, 848, 1324, 328, 556, 620, 694, 774, 850, 1342, 558, 622, 696, 776, 854, 1352, 446, 562, 624, 698, 782, 856, I354, 450, 564, 626, 700, 786, 858, 1370, 452, 566, 628, 702, 788, 868, I390, 456, 568, 630, 704, 790, 874, 1442, 458, 570, 632, 706, 794, 876, 1504, 466, 572, 638, 708, 795, 1514, 468, 574, 644, 710, 798, 1520, 472, 576, 646, 712, 800, 916, 1526, 476, 578, 650, 716, 802, 928, 1588, 478, 580, 654, 718, 804, 944, 1596, 480, 582, 656, 720, 806, 958, 1614, 492, 584, 658, 722, 808, 960, 1624, 494, 586, 660, 724, 810, 1008, 1632, 496, 588, 662, 726, 812, 1026, 1684, 506, 590, 664, 728, 814, 1098, 1708, 512, 592, 666, 730, 818, 1102, 514, 594, 668, 738, 820, 1134, 516, 598, 670, 740, 822, 1184, 518, 600, 672, 742, 824, 1192, 203.

Filed April 13, 1866.

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Supreme Court of the United States.

JAMES T. SOUTTER,

Survivor,

vs.

THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, and others.

Brief on motions, December Term, 1866, for the Milwaukee and Minnesota Railroad Company.

MATT H. CARPENTER,

Counsel.